

2005

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## Crimes (Sentencing) Bill 2005

### Contents

---

	Page
<b>Chapter 1</b>	
<b>Preliminary</b>	
1 Name of Act	2
2 Commencement	2
3 Dictionary	2
4 Notes	3
5 Offences against Act—application of Criminal Code etc	3
<b>Chapter 2</b>	
<b>Objects and important concepts</b>	
6 Objects of Act	4
7 Purposes of sentencing	4

---

2003 209B

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

		Page
8	Meaning of <i>offender</i>	5
<b>Chapter 3 Sentencing and non-conviction options</b>		
<b>Part 3.1 General</b>		
9	Imposition of penalties	6
<b>Part 3.2 Sentences of imprisonment</b>		
10	Imprisonment	7
11	Periodic detention	8
12	Suspended sentences	9
<b>Part 3.3 Non-custodial sentences</b>		
13	Good behaviour orders	11
14	Fines—orders to pay	13
15	Fines—maximum amounts	14
16	Driver licence disqualification orders—motor vehicle theft	14
17	Non-conviction orders—general	16
18	Non-conviction orders—ancillary orders	17
19	Reparation orders—losses and expenses generally	18
20	Reparation orders—stolen property	19
<b>Part 3.4 Non-association and place restriction orders</b>		
21	Definitions—pt 3.4	21
22	Application—pt 3.4	21
23	Non-association and place restriction orders—when may be made	21
24	Non-association and place restriction orders—maximum period	22
25	Non-association and place restriction orders—explanation and official notice	23
26	Non-association order—disclosure of identifying information	24
<b>Part 3.5 Deferred sentence orders</b>		
27	Deferred sentence orders—making	26

	Page
<b>Part 3.6</b>	<b>Combination sentences</b>
28	Application—pt 3.6 28
29	Combination sentences—offences punishable by imprisonment 28
30	Combination sentences—offences punishable by fine 29
31	Combination sentences—start and end 30
<b>Chapter 4</b>	<b>Sentencing procedures generally</b>
<b>Part 4.1</b>	<b>General principles</b>
32	Power to reduce penalties 32
33	Sentencing—relevant considerations 32
34	Sentencing—irrelevant considerations 35
35	Reduction of sentence—guilty plea 36
36	Reduction of sentence—assistance to law enforcement authorities 38
37	Reduction of sentence—statement by court about penalty 39
38	Sentences of imprisonment and uncompleted young offender orders 40
39	Judgment after sentence deferred 41
<b>Part 4.2</b>	<b>Pre-sentence reports</b>
40	Application—pt 4.2 42
41	Pre-sentence reports—order 42
42	Pre-sentence reports—contents 43
43	Pre-sentence reports—powers of assessors 46
44	Pre-sentence reports—provision to court 47
45	Pre-sentence reports—availability of written reports 48
46	Pre-sentence reports—cross-examination 48
<b>Part 4.3</b>	<b>Victim impact statements</b>
47	Definitions—pt 4.3 49
48	Application—pt 4.3 50
49	Victim impact statements—who may make 50
50	Victim impact statements—oral or written 50
51	Victim impact statements—form and contents 51
52	Victim impact statements—use in court 51

	Page
53	52
	52
<b>Part 4.4</b>	<b>Taking additional offences into account</b>
54	54
55	54
56	55
57	55
58	56
59	57
60	57
<b>Part 4.5</b>	<b>Correction and adjustment of penalties</b>
61	59
<b>Chapter 5</b>	<b>Imprisonment</b>
<b>Part 5.1</b>	<b>Imprisonment—start and end of sentences</b>
62	61
63	62
<b>Part 5.2</b>	<b>Imprisonment—nonparole periods</b>
64	63
65	63
66	64
67	65
68	65
<b>Part 5.3</b>	<b>Imprisonment—concurrent and consecutive sentences</b>
69	66
70	66
71	67
72	68
73	68

	Page
74	Amendment of start of sentences on setting aside or amending other sentences 69
75	Previous sentences to be noted in new sentence 69
<b>Part 5.4 Periodic detention</b>	
76	Application—pt 5.4 70
77	Periodic detention—eligibility 70
78	Periodic detention—suitability 71
79	Periodic detention—pre-sentence report matters 72
80	Periodic detention—concurrent and consecutive periods 73
<b>Part 5.5 Imprisonment—explanation and information</b>	
81	Application—pt 5.5 74
82	Imprisonment—explanation to offender 74
83	Imprisonment—written record of explanation 76
84	Imprisonment—official notice of sentence 77
<b>Chapter 6 Good behaviour orders</b>	
<b>Part 6.1 Good behaviour orders—community service conditions</b>	
85	Meaning of <i>community service condition</i> —pt 6.1 79
86	Application—pt 6.1 79
87	Community service—convicted offenders only 79
88	Community service—eligibility 80
89	Community service—suitability 80
90	Community service—pre-sentence report matters 81
91	Community service—hours to be performed 82
92	Community service—concurrent and consecutive orders 83
<b>Part 6.2 Good behaviour orders—rehabilitation program conditions</b>	
93	Definitions—pt 6.2 84
94	Application—pt 6.2 84

## Contents

---

	Page	
95	Rehabilitation programs—probation condition required	84
96	Rehabilitation programs—eligibility	84
97	Rehabilitation programs—suitability	85
98	Rehabilitation programs—pre-sentence report matters	87
99	Rehabilitation programs—maximum period	87
100	Rehabilitation programs—concurrent and consecutive orders	87
<b>Part 6.3</b>	<b>Good behaviour orders—explanations and official notice</b>	
101	Application—pt 6.3	88
102	Good behaviour orders—explanation to offenders	88
103	Good behaviour orders—official notice of order	88
104	Good behaviour orders—explanation and notice to sureties	90
<b>Part 6.4</b>	<b>Good behaviour orders—other provisions</b>	
105	Good behaviour—consequences of failure to sign undertaking	91
106	Good behaviour—maximum amount of security	91
<b>Chapter 7</b>	<b>Reparation orders</b>	
107	Application—ch 7	93
108	Reparation orders—no agreement about amount of loss etc	93
109	Reparation orders—payment by instalments	93
110	Reparation orders—evidential basis for orders	93
111	Reparation orders—power to make other orders etc	95
112	Reparation orders—Confiscation of Criminal Assets Act	95
113	Reparation orders—official notice of order	96
<b>Chapter 8</b>	<b>Deferred sentence orders</b>	
<b>Part 8.1</b>	<b>Deferred sentence orders—making</b>	
114	Application—pt 8.1	97
115	Meaning of <i>deferred sentence obligations</i> —pt 8.1	97
116	Deferred sentence orders—eligibility	97

	Page
117	98
118	99
119	99
120	99
121	99
122	100
<b>Part 8.2</b>	
	<b>Deferred sentence orders—supervision</b>
123	101
124	101
125	101
126	102
127	103
<b>Part 8.3</b>	
	<b>Deferred sentence orders—amendment or cancellation</b>
128	104
129	104
130	105
131	105
<b>Part 8.4</b>	
	<b>Deferred sentence orders—other provisions</b>
132	107
133	107
<b>Chapter 9</b>	
	<b>Miscellaneous</b>
134	109
135	109
136	110
137	111
138	111

Contents

---

	Page
<b>Chapter 10</b>	
<b>Transitional</b>	
139 Application of Act—charges after commencement	112
140 Nonparole periods—Rehabilitation of Offenders (Interim) Act, s 31	113
141 Reparation orders—Crimes Act, s 350	114
142 Transitional regulations	115
<b>Dictionary</b>	116



2005

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Attorney-General)

## **Crimes (Sentencing) Bill 2005**

---

### **A Bill for**

An Act to consolidate and reform the law about sentencing offenders, and for other purposes

---

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **Chapter 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Crimes (Sentencing) Act 2005*.

4 **2 Commencement**

5 This Act commences on a day fixed by the Minister by written  
6 notice.

7 *Note 1* The naming and commencement provisions automatically commence on  
8 the notification day (see Legislation Act, s 75 (1)).

9 *Note 2* A single day or time may be fixed, or different days or times may be  
10 fixed, for the commencement of different provisions (see Legislation  
11 Act, s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the  
13 notification day, it automatically commences on the first day after that  
14 period (see Legislation Act, s 79).

15 **3 Dictionary**

16 The dictionary at the end of this Act is part of this Act.

17 *Note 1* The dictionary at the end of this Act defines certain terms used in this  
18 Act, and includes references (*signpost definitions*) to other terms  
19 defined elsewhere.

20 For example, the signpost definition '*domestic violence offence*—see  
21 the *Domestic Violence and Protection Orders Act 2001*, section 9 (2).'  
22 means that the term 'domestic violence offence' is defined in that  
23 dictionary and the definition applies to this Act.

24 *Note 2* A definition in the dictionary (including a signpost definition) applies to  
25 the entire Act unless the definition, or another provision of the Act,  
26 provides otherwise or the contrary intention otherwise appears (see  
27 Legislation Act, s 155 and s 156 (1)).

1   **4**       **Notes**

2           A note included in this Act is explanatory and is not part of this Act.

3       *Note*    See the Legislation Act, s 127 (1), (4) and (5) for the legal status of  
4           notes.

5   **5**       **Offences against Act—application of Criminal Code etc**

6           Other legislation applies in relation to offences against this Act.

7       *Note 1*   *Criminal Code*

8           The Criminal Code, ch 2 applies to all offences against this Act (see  
9           Code, pt 2.1).

10          The chapter sets out the general principles of criminal responsibility  
11          (including burdens of proof and general defences), and defines terms  
12          used for offences to which the Code applies (eg *conduct*, *intention*,  
13          *recklessness* and *strict liability*).

14       *Note 2*   *Penalty units*

15          The Legislation Act, section 133 deals with the meaning of offence  
16          penalties that are expressed in penalty units.

1 **Chapter 2** **Objects and important**  
2 **concepts**

3 **6** **Objects of Act**

4 The objects of this Act include the following:

- 5 (a) to promote respect for the law and the maintenance of a just  
6 and safe society;
- 7 (b) to provide a range of sentencing options;
- 8 (c) to maximise the opportunity for imposing sentences that are  
9 constructively adapted to individual offenders;
- 10 (d) to promote flexibility in sentencing;
- 11 (e) to consolidate legislation relating to the imposition of  
12 sentences.

13 **7** **Purposes of sentencing**

- 14 (1) A court may impose a sentence on an offender for 1 or more of the  
15 following purposes:
- 16 (a) to ensure that the offender is adequately punished for the  
17 offence in a way that is just and appropriate;
- 18 (b) to prevent crime by deterring the offender and other people  
19 from committing the same or similar offences;
- 20 (c) to protect the community from the offender;
- 21 (d) to promote the rehabilitation of the offender;
- 22 (e) to make the offender accountable for his or her actions;
- 23 (f) to denounce the conduct of the offender;

1 (g) to recognise the harm done to the victim of the crime and the  
2 community.

3 (2) To remove any doubt, nothing about the order in which the purposes  
4 appear in subsection (1) implies that any purpose must be given  
5 greater weight than any other purpose.

6 **8 Meaning of *offender***

7 In this Act:

8 ***offender***—

9 (a) means a person convicted or found guilty of an offence by a  
10 court; and

11 (b) for part 4.2 (Pre-sentence reports)—see section 40.

1 **Chapter 3**                    **Sentencing and non-conviction**  
2    **options**

3 **Part 3.1**                    **General**

4 **9**                    **Imposition of penalties**

5                    (1) The penalty a court may impose for an offence is the penalty  
6                    provided under this Act or any other territory law.

7                    (2) Chapter 4 (Sentencing procedures generally) applies to the  
8                    imposition of all penalties imposed by a court, whether under this  
9                    Act or otherwise.

10                    *Note 1*    Under this Act, a court has the following sentencing and non-conviction  
11                    options:

- 12                    • imprisonment served by full-time detention in a correctional centre  
13                    (see s 10 and ch 5)
- 14                    • imprisonment served by periodic detention in a correctional centre  
15                    (see s 11 and pt 5.4)
- 16                    • suspension of a sentence of imprisonment (see s 12)
- 17                    • good behaviour order (see s 13 and ch 6)
- 18                    • fine order (see s 14 and s 15)
- 19                    • driver licence disqualification order (see s 16)
- 20                    • non-conviction order (see s 17 and s 18)
- 21                    • reparation order (see s 19, s 20 and ch 7)
- 22                    • non-association order (see pt 3.4)
- 23                    • place restriction order (see pt 3.4)
- 24                    • deferred sentence order (see s 27 and ch 8).

25                    *Note 2*    A court may also impose a **combination sentence** combining 2 or more  
26                    of the options listed in note 1 or otherwise available under a territory  
27                    law (see pt 3.6).

1 **Part 3.2 Sentences of imprisonment**

2 **10 Imprisonment**

3 (1) This section applies if a court is sentencing an offender convicted of  
4 an offence punishable by imprisonment.

5 (2) The court may, by order, sentence the offender to imprisonment, for  
6 all or part of the term of the sentence, if the court is satisfied, having  
7 considered possible alternatives, that no other penalty is appropriate.

8 *Note* An order sentencing an offender to imprisonment may be part of a  
9 combination sentence together with other sentencing options (see  
10 pt 3.6).

11 (3) If the court sentences the offender to imprisonment, the sentence  
12 must be served by full-time detention in a correctional centre,  
13 unless—

14 (a) the court orders otherwise; or

15 (b) the offender is released from full-time detention under this Act  
16 or another territory law.

17 **Example for par (a)**

18 the court makes a suspended sentence order

19 **Examples for par (b)**

20 1 the court sets a period of the sentence to be served by periodic detention

21 2 release on parole under the *Crimes (Sentence Administration) Act 2005*

22 *Note* An example is part of the Act, is not exhaustive and may extend, but  
23 does not limit, the meaning of the provision in which it appears (see  
24 Legislation Act, s 126 and s 132).

25 (4) If the court sentences the offender to imprisonment, the court must  
26 record the reasons for its decision.

27 (5) Failure to comply with subsection (4) does not invalidate the  
28 sentence of imprisonment.

1 (6) This section also applies subject to any contrary intention in the law  
2 that directly or indirectly creates the offence or directly or indirectly  
3 affects its scope or operation.

4 (7) This section is subject to chapter 5 (Imprisonment).

5 **11 Periodic detention**

6 (1) This section applies if—

7 (a) an offender is convicted of an offence; and

8 (b) the court sentences the offender to imprisonment for the  
9 offence.

10 (2) The court may, in the order sentencing the offender to  
11 imprisonment, set a period of the sentence of imprisonment  
12 (*a periodic detention period*) to be served by periodic detention.

13 *Note* A periodic detention period may be part of a combination sentence  
14 together with other sentencing options (see pt 3.6).

15 (3) The periodic detention period—

16 (a) may be for all or part of the offender's sentence of  
17 imprisonment; but

18 (b) must be for a period of at least 3 months and not longer than  
19 2 years.

20 (4) When the court sets the periodic detention period, the court must  
21 state—

22 (a) when the periodic detention period starts and ends; and

23 (b) the day the first detention period under the *Crimes (Sentence*  
24 *Administration) Act 2005* for the offender is to start.



- 1 (5) The court may also recommend any condition, not inconsistent with  
2 this Act or the *Crimes (Sentence Administration) Act 2005*, that the  
3 court considers appropriate for the offender's periodic detention.

4 **Examples of conditions**

5 see the examples to section 13 (3) (g) (Good behaviour orders)

6 *Note 1* The sentence administration board may consider any recommendation  
7 made by the court but is not bound to follow the recommendation (see  
8 *Crimes (Sentence Administration) Act 2005*).

9 *Note 2* An example is part of the Act, is not exhaustive and may extend, but  
10 does not limit, the meaning of the provision in which it appears (see  
11 Legislation Act, s 126 and s 132).

- 12 (6) This section is subject to chapter 5 (Imprisonment).

13 *Note* See, in particular, pt 5.4 about eligibility and suitability for, and other  
14 matters in relation to, periodic detention.

15 **12 Suspended sentences**

- 16 (1) This section applies if—  
17 (a) an offender is convicted of an offence; and  
18 (b) the court sentences the offender to imprisonment for the  
19 offence.

20 (2) The court may make an order (a *suspended sentence order*)  
21 suspending all or part of the sentence of imprisonment.

22 (3) If the court makes a suspended sentence order, the court must also  
23 make a good behaviour order for the period during which the  
24 sentence is suspended or for any longer period that the court  
25 considers appropriate.

26 *Note* A suspended sentence order may be part of a combination sentence  
27 together with other sentencing options (see pt 3.6).

28 (4) If the court makes a suspended sentence order fully suspending the  
29 sentence of imprisonment, the court must, as soon as practicable

1 after the order is made, ensure that written notice of the order,  
2 together with a copy of the order, is given to the offender.

3 *Note* For notice of a partly suspended sentence of imprisonment, see s 84.

4 (5) Failure to comply with subsection (4) does not invalidate the  
5 suspended sentence order.

6 (6) This section is subject to the following provisions:

7 (a) section 13 (Good behaviour orders);

8 (b) chapter 5 (Imprisonment);

9 (c) chapter 6 (Good behaviour orders).

1 **Part 3.3 Non-custodial sentences**

2 **13 Good behaviour orders**

- 3 (1) This section applies if an offender is convicted or found guilty of an  
4 offence.

5 *Note* If a good behaviour order is made without convicting the offender  
6 (see s 17), it is also a non-conviction order (see s 17 (2)).

- 7 (2) The court may make an order (a **good behaviour order**) requiring  
8 the offender to sign an undertaking to comply with the offender's  
9 good behaviour obligations under the *Crimes (Sentence*  
10 *Administration) Act 2005* for a stated period.

- 11 (3) A good behaviour order may include any or all of the following  
12 conditions:

13 (a) that the offender give security for a stated amount, with or  
14 without sureties, for compliance with the order;

15 (b) a community service condition;

16 *Note* A community service condition must not be included in the order  
17 unless the offender is convicted of the offence (see s 87).

18 (c) a rehabilitation program condition;

19 *Note* A good behaviour order that includes a rehabilitation program  
20 condition must also include a probation condition (see s 95).

21 (d) a probation condition;

22 (e) that the offender comply with a reparation order;

23 (f) a condition prescribed by regulation for this paragraph;

- 1 (g) any other condition, not inconsistent with this Act or the  
2 *Crimes (Sentence Administration) Act 2005*, that the court  
3 considers appropriate.
- 4 **Examples of conditions for par (g)**
- 5 1 that the offender undertake medical treatment and supervision (eg by taking  
6 medication and cooperating with medical assessments)
- 7 2 that the offender supply samples of blood, breath, hair, saliva or urine for  
8 alcohol or drug testing if required by a corrections officer
- 9 3 that the offender attend educational, vocational, psychological, psychiatric or  
10 other programs or counselling
- 11 4 that the offender not drive a motor vehicle or consume alcohol or  
12 non-prescription drugs or medications
- 13 5 that the offender regularly attend alcohol or drug management programs
- 14 *Note 1* A court may also issue assessment orders and treatment orders under the  
15 *Drugs of Dependence Act 1989*, pt 9 providing for the participation of  
16 offenders in drug treatment programs.
- 17 *Note 2* An example is part of the Act, is not exhaustive and may extend, but  
18 does not limit, the meaning of the provision in which it appears (see  
19 Legislation Act, s 126 and s 132).
- 20 (4) If the offence is punishable by imprisonment, a good behaviour  
21 order—
- 22 (a) may be made instead of imposing a sentence of imprisonment  
23 or as part of a combination sentence that includes  
24 imprisonment; and
- 25 (b) may apply to all or part of the term of the sentence.
- 26 (5) Subsection (4) does not, by implication, limit the sentences that a  
27 court may impose under this Act or another territory law.
- 28 (6) If the good behaviour order includes a community service condition,  
29 it is a community service order.
- 30 (7) If the good behaviour order includes a rehabilitation program  
31 condition, it is a rehabilitation program order.

1 (8) This section is subject to section 13 (Good behaviour orders) and  
2 chapter 6 (Good behaviour orders).

3 **14 Fines—orders to pay**

4 (1) This section applies if an offender is convicted of an offence that is  
5 punishable by a fine.

6 (2) The court may make an order (a *fine order*) directing that the  
7 offender pay a fine for the offence.

8 *Note* The Legislation Act, s 133, s 135 and s 136 deal with penalty units and  
9 the effect of the statement of a penalty for an offence in a territory law.

10 (3) The court is not required to inquire into the offender's financial  
11 circumstances before making a fine order but must consider any  
12 facts established by the offender about the offender's financial  
13 circumstances.

14 *Note* Section 33 (1) (m) requires the court, in deciding how to sentence an  
15 offender, to consider the offender's financial circumstances if relevant  
16 and known to the court.

17 (4) The court may make a fine order for the offender whether or not the  
18 offence is punishable by a fine otherwise than under this part.

19 (5) If a court makes a fine order, the court must state in the order—

20 (a) the amount of the fine; and

21 (b) how the fine is to be paid (for example, by stated instalments at  
22 stated times).

23 *Note* An example is part of the Act, is not exhaustive and may extend, but  
24 does not limit, the meaning of the provision in which it appears (see  
25 Legislation Act, s 126 and s 132).

- 1 (6) As soon as practicable after the court makes a fine order, the court  
2 must ensure that written notice of the order, together with a copy of  
3 the order, is given to the offender.

4 *Note* If the order is part of a combination sentence, a single notice may be  
5 given for the sentences (see Legislation Act, s 49).

- 6 (7) Failure to comply with subsection (6) does not invalidate the fine  
7 order.

## 8 **15 Fines—maximum amounts**

9 The maximum fine that a court may impose for an offence is—

- 10 (a) if the offence is punishable by a fine otherwise than under this  
11 part—the maximum amount fixed for the fine; or  
12 (b) in any other case—  
13 (i) if the Supreme Court makes the order—\$10 000; or  
14 (ii) if the Magistrates Court makes the order—\$2 000.

## 15 **16 Driver licence disqualification orders—motor vehicle theft**

- 16 (1) This section applies if—  
17 (a) an offender is convicted or found guilty of an offence against a  
18 territory law involving the theft of a motor vehicle; or  
19 (b) an offender is convicted or found guilty of an offence against  
20 the Criminal Code, section 318 (Taking etc motor vehicle  
21 without consent).

### 22 **Example for par (a)**

23 an offence against any of the following provisions of the Criminal Code in  
24 relation to property that is a motor vehicle:

- 25 • s 308 (Theft)  
26 • s 309 (Robbery)  
27 • s 310 (Aggravated robbery)

- 1                   • s 311 (Burglary)
- 2                   • s 312 (Aggravated burglary)
- 3                   *Note 1*   **Found guilty** of an offence includes making a non-conviction
- 4   order for the offence or taking the offence into account under s 57
- 5   (see Legislation Act, dict, pt 1).
- 6                   *Note 2*   An example is part of the Act, is not exhaustive and may extend,
- 7   but does not limit, the meaning of the provision in which it
- 8   appears (see Legislation Act, s 126 and s 132).
- 9                   (2) The court sentencing the offender may make an order (a **driver**
- 10   **licence disqualification order**) disqualifying the offender from
- 11   holding or obtaining a driver licence under the *Road Transport*
- 12   *(Driver Licensing) Act 1999* for a period the court considers
- 13   appropriate.
- 14                   *Note*    The effect of disqualification is set out in the *Road Transport (General)*
- 15   *Act 1999*, s 66.
- 16                   (3) To remove any doubt, this section is additional to the court's other
- 17   powers under this Act or any other territory law, including, for
- 18   example, the road transport legislation.
- 19                   (4) As soon as practicable after the court makes a driver licence
- 20   disqualification order, the court must ensure that written notice of
- 21   the order, together with a copy of the order, is given to—
- 22   (a) the offender; and
- 23   (b) the road transport authority.
- 24                   *Note*    If the order is part of a combination sentence, a single notice may be
- 25   given to the offender for the sentences (see Legislation Act, s 49).
- 26                   (5) Failure to comply with subsection (4) does not invalidate the driver
- 27   licence disqualification order.

- 1           (6) In this section:  
2                 *motor vehicle*—see the Criminal Code, section 318 (3).  
3                 *road transport legislation*—see the *Road Transport (General)*  
4                 *Act 1999*, section 6.

5   **17        Non-conviction orders—general**

- 6           (1) This section applies if an offender is found guilty of an offence.  
7           (2) Without convicting the offender of the offence, the court may make  
8                 either of the following orders (each of which is a *non-conviction*  
9                 *order*):  
10                 (a) an order directing that the charge be dismissed, if the court is  
11                         satisfied that it is not appropriate to impose any punishment  
12                         (other than nominal punishment) on the offender;  
13                 (b) a good behaviour order under section 13.  
14                 *Note*     A good behaviour order for a non-conviction order cannot include a  
15                         community service condition because the offender is not convicted of  
16                         the offence (see s 87).  
17           (3) In deciding whether to make a non-conviction order for the  
18                 offender, the court must consider the following:  
19                 (a) the offender’s character, antecedents, age, health and mental  
20                         condition;  
21                 (b) the seriousness of the offence;  
22                 (c) any extenuating circumstances in which the offence was  
23                         committed.  
24           (4) The court may also consider anything else the court considers  
25                 relevant.

- 26                 *Note*     An appeal may lie to the Supreme Court from a decision of the  
27                         Magistrates Court to make a non-conviction order for an offender in the  
28                         same circumstances as an appeal from a decision of the Magistrates



1 Court in relation to an offender's conviction for an offence (see  
2 *Magistrates Court Act 1930*, pt 3.10).

3 (5) If the court makes a non-conviction order under subsection (2) (a)  
4 for the offender, the court must, as soon as practicable after the  
5 order is made, ensure that written notice of the order, together with a  
6 copy of the order, is given to the offender.

7 *Note* For notice of a good behaviour order under s (2) (b), see s 103.

8 (6) Failure to comply with subsection (5) does not invalidate the  
9 non-conviction order.

10 (7) If the court makes a non-conviction order under subsection (2) (b),  
11 the good behaviour order must be for a term of no longer than  
12 3 years.

13 (8) This section (other than subsection (7)) is subject to section 13 and  
14 chapter 6 (Good behaviour orders).

## 15 **18 Non-conviction orders—ancillary orders**

16 (1) This section applies if the court makes a non-conviction order for an  
17 offender for an offence.

18 (2) The court may make any ancillary order that it could have made if it  
19 had convicted the offender of the offence.

20 (3) The offender has the same rights of appeal in relation to the making  
21 of the ancillary order as the offender would have had if the order  
22 had been made on the conviction of the offender for the offence.

23 (4) The ancillary order automatically lapses if the finding of guilt of the  
24 offender for the offence is reversed or set aside.

25 (5) In this section:

26 *ancillary order* means an order or direction in relation to any of the  
27 following:

28 (a) restitution;

- 1 (b) compensation;  
2 (c) costs;  
3 (d) forfeiture;  
4 (e) destruction;  
5 (f) disqualification or loss or suspension of a licence or privilege.

6 **Examples**

- 7 1 a reparation order  
8 2 the forfeiture of an offensive weapon under the Criminal Code,  
9 section 375 (2) (which relates to being found guilty of possessing an  
10 offensive weapon with intent to use it in relation to theft)  
11 3 a driver licence disqualification order

12 *Note* An example is part of the Act, is not exhaustive and may extend, but  
13 does not limit, the meaning of the provision in which it appears (see  
14 Legislation Act, s 126 and s 132).

15 **19 Reparation orders—losses and expenses generally**

- 16 (1) This section applies if—  
17 (a) an offender is convicted or found guilty of an offence against a  
18 territory law; and  
19 (b) a person (the *injured person*) suffers loss or incurs expense  
20 (including any out-of-pocket expense) as a direct result of the  
21 commission of the offence.

22 *Note 1* **Found guilty** of an offence includes making a non-conviction order for  
23 the offence or taking the offence into account under s 57 (see  
24 Legislation Act, dict, pt 1).

25 *Note 2* Certain victims of crimes may claim financial assistance under the  
26 *Victims of Crime (Financial Assistance) Act 1983*.

- 27 (2) Before the court sentences the offender or makes a non-conviction  
28 order for the offender, the director of public prosecutions may apply  
29 to the court for an order under this section.

- 1 (3) On application under subsection (2), or its own initiative, the court  
2 may make an order (a *reparation order*) requiring the offender to  
3 make reparation to the injured person, by way of a payment of  
4 money or otherwise, for the loss or expense.

5 *Note* If the offence relates to stolen property, a reparation order may also be  
6 made under s 20 (see s 111).

- 7 (4) This section is subject to chapter 7 (Reparation orders).

- 8 (5) In this section:

9 *loss*—see the Criminal Code, section 300.

## 10 **20 Reparation orders—stolen property**

- 11 (1) This section applies if an offender is convicted or found guilty of an  
12 offence against a territory law in relation to stolen property.

- 13 (2) Before the court sentences the offender or makes a non-conviction  
14 order for the offender, the director of public prosecutions may apply  
15 to the court for 1 or more orders under this section.

- 16 (3) On application under subsection (2), or its own initiative, the court  
17 may make the following orders (each of which is a *reparation*  
18 *order*):

19 (a) an order that a person having custody or possession of the  
20 stolen property restore it to someone entitled to recover it from  
21 the person;

22 (b) an order that the offender pay the value of the stolen property  
23 to a person who, if the stolen property were in the custody or  
24 possession of the offender, would be entitled to recover it from  
25 the offender.

26 *Note* A reparation order may also be made under s 19 for the same offence  
27 (see s 111).

- 28 (4) If the court makes an order under subsection (3) (a), the court, on  
29 application under subsection (2), or its own initiative, may also

Section 20

---

- 1           make either or both the following orders (each of which is also a  
2           ***reparation order***):
- 3           (a) if the court considers that the offender has sold the property to  
4           a purchaser who was acting honestly—an order that the  
5           offender pay the purchaser an amount not exceeding the  
6           amount paid by the purchaser;
- 7           (b) if the court considers that the offender has borrowed money on  
8           the security of the property from a lender acting honestly—an  
9           order that the offender pay the lender an amount not exceeding  
10          the amount owed to the lender under the loan.
- 11          (5) This section is subject to chapter 7 (Reparation orders).
- 12          (6) In this section:
- 13           ***stolen property***—see the Criminal Code, section 314 (Receiving—  
14           meaning of *stolen property*).
- 15          *Note*     Under the Criminal Code, stolen property includes tainted property.  
16                    Tainted property is the proceeds of the sale of stolen property, or  
17                    property that is exchanged for stolen property.

1 **Part 3.4** **Non-association and place**  
2 **restriction orders**

3 **21** **Definitions—pt 3.4**

4 In this Act:

5 *non-association order* means an order prohibiting an offender  
6 from—

- 7 (a) being with a named person, or attempting to be with the  
8 person; or  
9 (b) being with a named person or communicating in any way with  
10 the person, or attempting to be with the person or to  
11 communicate in any way with the person.

12 *place restriction order* means an order prohibiting an offender from  
13 being in, or within a stated distance of, a named place or area or  
14 attempting to be in, or within the stated distance, of the place or  
15 area.

16 **22** **Application—pt 3.4**

17 This part applies if a court makes either or both of the following  
18 orders for an offender in relation to an offence:

- 19 (a) an order setting a periodic detention period;  
20 (b) a good behaviour order.

21 **23** **Non-association and place restriction orders—when may**  
22 **be made**

- 23 (1) The court may make a non-association order or place restriction  
24 order for the offender if—  
25 (a) the offence is a personal violence offence; and

Section 24

---

- 1 (b) the court is satisfied that it is necessary and reasonable to make  
2 the order for 1 or more of the following purposes:
- 3 (i) preventing the offender from harassing anyone or  
4 endangering the safety or welfare of anyone;
- 5 (ii) preventing the offender from committing further offences  
6 (including a personal violence offence);
- 7 (iii) assisting the offender to manage things that may make the  
8 offender more likely to commit further offences  
9 (including a personal violence offence) if not managed.
- 10 (2) The restriction imposed on the offender by a non-association order  
11 or place restriction order, and the period of the order, must not be  
12 unreasonably disproportionate to the purpose for which the order is  
13 made.
- 14 (3) To remove any doubt, this section is additional to the court's other  
15 powers under this Act or any other territory law.
- 16 (4) In this section:
- 17 *harm*—see the Criminal Code, dictionary.
- 18 *personal violence offence* means—
- 19 (a) an offence that involves causing harm, or threatening to cause  
20 harm, to anyone; or
- 21 (b) a domestic violence offence.
- 22 **24 Non-association and place restriction orders—maximum**  
23 **period**
- 24 (1) A non-association order or place restriction order—
- 25 (a) must be for a period of no longer than 12 months; and  
26 (b) must state when it starts and the period for which it operates.

- 1 (2) To remove any doubt, the period of a non-association order or place  
2 restriction order is not limited by the term of any other sentence  
3 imposed for the offence for which the order is made.

4 **Example**

5 Sean is convicted of an offence. The court decides that the appropriate penalty is  
6 6 months periodic detention and a place restriction order. The place restriction  
7 order may be for longer than 6 months (but no longer than 12 months).

8 *Note* An example is part of the Act, is not exhaustive and may extend, but  
9 does not limit, the meaning of the provision in which it appears (see  
10 Legislation Act, s 126 and s 132).

11 **25 Non-association and place restriction orders—**  
12 **explanation and official notice**

- 13 (1) If a court makes a non-association order or place restriction order  
14 for the offender, the court must ensure that reasonable steps are  
15 taken to explain to the offender in general terms (and in language  
16 the offender can readily understand)—

- 17 (a) the nature of the order; and  
18 (b) the offender's obligations under the order; and  
19 (c) the consequences if the offender breaches the obligations.

20 *Note* An offender may breach the obligations by failing to comply with  
21 them (see Legislation Act, dict, pt 1, def *breach*).

- 22 (2) As soon as practicable after the court makes the non-association  
23 order or place restriction order, the court must ensure that written  
24 notice of the order, together with a copy of the order, is given to the  
25 offender.

- 26 (3) Failure to comply with this section does not invalidate the  
27 non-association order or place restriction order.

- 1    **26**        **Non-association order—disclosure of identifying**  
2                    **information**
- 3            (1) A person commits an offence if the person publishes—
- 4                    (a) the fact that a person is someone (other than the offender) to  
5                               whom a non-association order relates; or
- 6                    (b) any information that could reasonably identify someone (other  
7                               than the offender) to whom a non-association order relates.
- 8            Maximum penalty: 10 penalty units.
- 9            (2) Subsection (1) does not apply if the publication is—
- 10                   (a) to a relevant person (see subsection (5)); or
- 11                   (b) to a named person by, or in accordance with, a direction of a  
12                               court; or
- 13                   (c) part of an official report of a court proceeding and the  
14                               publication is relevant to the proceeding.
- 15            (3) However, a court must not give a direction under subsection (2) (b)  
16                    unless it is satisfied that the publication is in the interests of justice.
- 17            (4) An offence against this section is a strict liability offence.
- 18            (5) In this section:
- 19                    *relevant person* means any of the following:
- 20                               (a) the offender;
- 21                               (b) a person (other than the offender) to whom the order relates;
- 22                               (c) a police officer;
- 23                               (d) anyone involved in the administration of the order, or any other  
24                               penalty to which the offender is subject in relation to the  
25                               offence for which the order was made;



- 1 (e) anyone involved in a proceeding for failure to comply with the  
2 non-association order;
- 3 (f) anyone stated in the non-association order as someone to  
4 whom the information may be published;
- 5 (g) anyone else to whom the information is required or allowed to  
6 be published under a law of the Territory, the Commonwealth,  
7 a State or another Territory.

## 1      **Part 3.5                      Deferred sentence orders**

### 2      **27              Deferred sentence orders—making**

3              (1) This section applies if—

4                      (a) an offender has been convicted or found guilty by a court of an  
5                                  offence punishable by imprisonment; and

6                      (b) the court has not sentenced the offender for the offence; and

7                      (c) the offender is neither serving, nor liable to serve, a term of  
8                                  imprisonment for another offence; and

9                      (d) the court considers the offender should be given an opportunity  
10                                  to address his or her criminal behaviour, and anything that has  
11                                  contributed to the behaviour, before the court sentences the  
12                                  offender for the offence; and

13                      (e) the court is satisfied that it may release the offender on bail  
14                                  under the *Bail Act 1992*.

15              (2) The court may make an order (a *deferred sentence order*) requiring  
16                      the offender to appear before the court at the time and place stated in  
17                      the order to be sentenced for the offence.

18              *Note*      The maximum period of the order is 12 months (see s 122 (1)).

19              (3) If the court makes a deferred sentence order for the offender, the  
20                      court must release the offender on bail under the *Bail Act 1992*.

21              (4) A deferred sentence order applies to all offences for which the court  
22                      may sentence the offender, whether or not they are punishable by  
23                      imprisonment.

1 (5) A deferred sentence order may include any condition the court  
2 considers appropriate for subsection (1) (d).

3 **Examples**

4 see the examples to section 13 (3) (g) (Good behaviour orders)

5 *Note 1* Bail may be granted subject to conditions (see *Bail Act 1992*, s 25).

6 *Note 2* An example is part of the Act, is not exhaustive and may extend, but  
7 does not limit, the meaning of the provision in which it appears (see  
8 Legislation Act, s 126 and s 132).

9 (6) This section is subject to chapter 8 (Deferred sentence orders).

1 **Part 3.6** **Combination sentences**

2 **28** **Application—pt 3.6**

3 This part applies if an offender is convicted of an offence.

4 **29** **Combination sentences—offences punishable by**  
5 **imprisonment**

6 (1) If the offence is punishable by imprisonment, the court sentencing  
7 the offender may impose a sentence (a *combination sentence*)  
8 consisting of 2 or more of the following orders:

9 (a) an order sentencing the offender to imprisonment (whether as  
10 full-time detention, periodic detention or a combination of  
11 these kinds of imprisonment);

12 *Note* A sentence of imprisonment must be served by full-time detention  
13 in a correctional centre unless the court orders otherwise, or the  
14 offender is released from detention under this Act or another  
15 territory law (see s 10 (3)).

16 (b) a suspended sentence order;

17 (c) a good behaviour order;

18 (d) a fine order;

19 (e) a driver licence disqualification order;

20 (f) a reparation order;

21 (g) a non-association order;

22 (h) a place restriction order;

23 (i) a treatment order under the *Drugs of Dependence Act 1989*,  
24 section 123;

- 1 (j) an order (however described) imposing another penalty  
2 available under any other territory law.

3 **Examples**

4 The following are examples of sentences that might be imposed on an offender by  
5 a court who has been convicted of an offence punishable by imprisonment:

- 6 1 a sentence of 18 months as follows:
- 7 • a 12-month periodic detention period
  - 8 • a fine order directing payment of \$500 by stated instalments
  - 9 • a good behaviour order for 6 months (the remainder of the term of the  
10 sentence) that includes conditions requiring the offender to undertake  
11 240 hours community service work
- 12 2 a sentence of 3 years and 6 months as follows:
- 13 • an order for 2 years imprisonment (ie full-time detention in a  
14 correctional centre) with no nonparole period
  - 15 • a 1-year periodic detention period and a concurrent non-association  
16 order
  - 17 • a good behaviour order for 6 months (the remainder of the term of the  
18 sentence) and a concurrent non-association order
- 19 3 a sentence of 2 years as follows:
- 20 • a 1-year periodic detention period and a concurrent place restriction  
21 order
  - 22 • a good behaviour order for 1 year (the remainder of the term of the  
23 sentence)
  - 24 • a driver licence disqualification order for all of the sentence.

25 *Note* An example is part of the Act, is not exhaustive and may extend, but  
26 does not limit, the meaning of the provision in which it appears (see  
27 Legislation Act, s 126 and s 132).

- 28 (2) However, the court must not make an order that forms part of the  
29 combination sentence unless the court would have power to make  
30 the order otherwise than as part of a combination sentence.

31 **30 Combination sentences—offences punishable by fine**

- 32 (1) If the offence is not punishable by imprisonment (except in default  
33 of payment of a fine), the court sentencing the offender may impose

- 1 a sentence (also a *combination sentence*) consisting of 2 or more of  
2 the following orders:
- 3 (a) a good behaviour order;  
4 (b) a fine order;  
5 (c) a driver licence disqualification order;  
6 (d) a reparation order;  
7 (e) a non-association order;  
8 (f) a place restriction order;  
9 (g) an order (however described) imposing another penalty  
10 available under any other territory law.
- 11 (2) However, the court must not make an order that forms part of the  
12 combination sentence unless the court would have power to make  
13 the order otherwise than as part of a combination sentence.

14 **31 Combination sentences—start and end**

15 For a combination sentence, a court may set the start or end of the  
16 period of any part of the sentence, or of any order forming part of  
17 the sentence, by reference to anything the court considers  
18 appropriate, including, for example—

- 19 (a) a stated day; or  
20 (b) the lapse of a stated period of time; or  
21 (c) whenever a stated event happens, or whenever the earlier or  
22 later of 2 or more stated events happens.

23 **Example for par (c)**

24 a 5-year combination sentence consisting of the following orders:

- 25 • an order for imprisonment (ie full-time detention in a correctional  
26 centre) with a 3-year nonparole period

- 1
- 2
- 3
- 4
- 5
- 6
- a good behaviour order and a place restriction order, stated to start whenever (if at all) the offender is released on parole and to end at the end of the 5-year term of the sentence
  - a driver licence disqualification order, also stated to start whenever (if at all) the offender is released on parole and to end at the end of the 5-year term of the sentence
- 7
- 8
- 9
- Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

1 **Chapter 4 Sentencing procedures**  
2 **generally**

3 **Part 4.1 General principles**

4 **32 Power to reduce penalties**

- 5 (1) If, under a territory law, an offender is liable to imprisonment for  
6 life, a court may nevertheless impose a sentence of imprisonment  
7 for a stated term.
- 8 (2) If, under a territory law, an offender is liable to imprisonment for a  
9 stated term, a court may nevertheless impose a sentence of  
10 imprisonment for a lesser term.
- 11 (3) If, under a territory law, an offender is liable to a fine of a stated  
12 amount, a court may nevertheless make a fine order for a lesser  
13 amount.
- 14 (4) This section—
- 15 (a) is not limited by any other provision of this chapter; and
- 16 (b) does not limit any discretion the court has, apart from this  
17 section, about the imposition of penalties.

18 **33 Sentencing—relevant considerations**

- 19 (1) In deciding how an offender should be sentenced (if at all) for an  
20 offence, a court must consider whichever of the following matters  
21 are relevant and known to the court:
- 22 (a) the nature and circumstances of the offence;
- 23 (b) any other offences required or allowed to be taken into  
24 account;



- 1 (c) if the offence forms part of a course of conduct consisting of a  
2 series of criminal acts of the same or a similar character—the  
3 course of conduct;
- 4 (d) if the personal circumstances of any victim of the offence were  
5 known to the offender when the offence was committed—the  
6 circumstances;
- 7 (e) any injury, loss or damage resulting from the offence;
- 8 (f) the effect of the offence on the victims of the offence, the  
9 victims' families and anyone else who may make a victim  
10 impact statement;
- 11 *Note 1* For who may make a victim impact statement, see s 49.
- 12 *Note 2* The court must not draw any inference about the harm suffered by  
13 a victim from the fact that a victim impact statement is not given  
14 to the court in relation to the offence (see s 53 (1) (b)).
- 15 (g) any action the offender may have taken to make reparation for  
16 any injury, loss or damage resulting from the offence;
- 17 (h) the degree of responsibility of the offender for the commission  
18 of the offence;
- 19 (i) a plea of guilty by the offender (see section 35);
- 20 (j) the nature and extent of any pre-trial disclosures by the  
21 defence;
- 22 (k) any assistance by the offender to law enforcement authorities  
23 (see section 36);
- 24 (l) the cultural background, character, antecedents, age and  
25 physical or mental condition of the offender;
- 26 (m) the financial circumstances of the offender;
- 27 (n) the probable effect that any sentence or order under  
28 consideration would have on any of the offender's family or  
29 dependants;
-

Section 33

---

- 1 (o) whether the offender was affected by alcohol or a controlled  
2 drug when the offence was committed and the circumstances in  
3 which the offender became affected;
- 4 (p) the degree to which the offence was the result of provocation,  
5 duress or entrapment;
- 6 (q) whether the recording of a conviction or the imposition of a  
7 particular penalty would be likely to cause particular hardship  
8 to the offender;
- 9 (r) any jury recommendation for mercy;
- 10 (s) whether the offender is voluntarily seeking treatment for any  
11 physical or mental condition that may have contributed to the  
12 commission of the offence;
- 13 (t) whether the offender was in a position of trust or authority  
14 when the offence was committed;
- 15 (u) the reason or reasons why the offender committed the offence;
- 16 (v) whether the offender has demonstrated remorse;
- 17 (w) if the offender has accepted responsibility for the offence to  
18 take part in restorative justice under the *Crimes (Restorative  
19 Justice) Act 2004*—that fact;
- 20 (x) whether the offender has paid the prescribed penalty in  
21 accordance with any infringement notice served on the  
22 offender for the offence;
- 23 *Note* For when an infringement notice may be withdrawn after it has  
24 been paid, see the *Magistrates Court Act 1930*, s 127 and the  
25 *Road Transport (General) Act 1999*, s 31.
- 26 (y) current sentencing practice.
- 27 (2) Without limiting subsection (1), in deciding whether a good  
28 behaviour order is an appropriate penalty for an offence, the court

- 1            must consider the nature and severity of the conditions that may  
2            apply to the offender under the order.
- 3            (3) Subsections (1) and (2) do not limit the matters a court may consider  
4            in deciding how an offender should be sentenced (if at all) for an  
5            offence.
- 6            (4) The fact that any relevant factor is known to the court does not  
7            require the court to increase or reduce the severity of the sentence  
8            for the offence.
- 9            (5) In this section:
- 10           *defence* means—
- 11           (a) any lawyer representing the offender; or
- 12           (b) if the offender is not legally represented—the offender.

13           **34            Sentencing—irrelevant considerations**

- 14           (1) In deciding how an offender should be sentenced (if at all) for an  
15           offence, a court must not increase the severity of the sentence it  
16           would otherwise have imposed because of any of the following:
- 17           (a) a law that has not commenced;
- 18           (b) any alleged offences that the offender has not admitted in  
19           accordance with section 57 (Outstanding additional offences  
20           taken into account in sentencing);
- 21           (c) that the offender chose not to give evidence on oath;
- 22           (d) that the offender may have committed perjury or been guilty of  
23           contempt of court during the proceeding;
- 24           (e) the offender's behaviour in court;
- 25           (f) that the offender chose to plead not guilty;

1 (g) that the offender chose not to take part, or chose not to  
2 continue to take part, in restorative justice for the offence  
3 under the *Crimes (Restorative Justice) Act 2004*.

4 (2) In deciding how an offender should be sentenced for an offence, a  
5 court must not reduce the severity of a sentence it would otherwise  
6 have imposed because of an automatic forfeiture of property, a  
7 forfeiture order, or a penalty order, under the *Confiscation of*  
8 *Criminal Assets Act 2003*.

9 **35 Reduction of sentence—guilty plea**

10 (1) This section applies if—

11 (a) an offender pleads guilty to an offence; and

12 (b) based on the information currently available to the court, the  
13 court considers that there is a real likelihood that it will  
14 sentence the offender to imprisonment.

15 (2) In deciding how the offender should be sentenced (if at all) for the  
16 offence, the court must consider the following matters:

17 (a) the fact that the offender pleaded guilty;

18 (b) when the offender pleaded guilty, or indicated an intention to  
19 plead guilty;

20 (c) whether the guilty plea was related to negotiations between the  
21 prosecution and defence about the charge to which the offender  
22 pleaded guilty;

23 (d) the seriousness of the offence;

24 (e) the effect of the offence on the victims of the offence, the  
25 victims' families and anyone else who may make a victim  
26 impact statement.

27 *Note* For who may make a victim impact statement, see s 49.

- 1 (3) The court may impose a lesser penalty (including a shorter  
2 nonparole period) on the offender than it would otherwise have  
3 imposed if the offender had not pleaded guilty to the offence.
- 4 (4) However, in deciding any lesser penalty, the court must not make  
5 any significant reduction for the fact that the offender pleaded guilty  
6 if, based on established facts, the court considers that the  
7 prosecution's case for the offence was overwhelmingly strong.
- 8 (5) For subsection (2) (b), the earlier in the proceeding that the guilty  
9 plea is made, or indication is given that it will be made, the lesser  
10 the penalty the court may impose.
- 11 (6) A lesser penalty imposed under this section must not be  
12 unreasonably disproportionate to the nature and circumstances of  
13 the offence.
- 14 (7) In this section:
- 15 **available documents**, in relation to the offence, means any of the  
16 following:
- 17 (a) any written statements or admissions made for use as evidence  
18 at a trial that would have been admissible as evidence at the  
19 trial for the offence;
- 20 (b) depositions taken at any committal proceeding for the offence;
- 21 (c) any written statements or admissions used as evidence in any  
22 committal proceeding for the offence;
- 23 (d) any other relevant written documents.
- 24 **defence**—see section 33 (5).
- 25 **established facts** means facts established by—
- 26 (a) evidence given at the trial; or  
27 (b) available documents; or

- 1 (c) admissions by the offender; or  
2 (d) submissions made by the prosecution or defence.

3 **36 Reduction of sentence—assistance to law enforcement**  
4 **authorities**

- 5 (1) This section applies if—  
6 (a) an offender is convicted or found guilty of an offence; and  
7 (b) the offender assisted, or undertook to assist, law enforcement  
8 authorities in—  
9 (i) preventing, detecting or investigating the offence or any  
10 other offence; or  
11 (ii) a proceeding in relation to the offence or any other  
12 offence.  
13 (2) A court may impose a lesser penalty (including a shorter nonparole  
14 period) on the offender than it would otherwise have imposed  
15 having regard to the degree of assistance provided, or undertaken to  
16 be provided, to law enforcement authorities.

17 *Note* The DPP may appeal against the reduced sentence if the offender does  
18 not comply with the undertaking (see s 136).

- 19 (3) In deciding whether to impose a lesser penalty for the offence, and  
20 the nature and extent of the penalty to be imposed, the court must  
21 consider the following matters:  
22 (a) the effect of the offence on the victims of the offence, the  
23 victims' families and anyone else who may make a victim  
24 impact statement;  
25 *Note* For who may make a victim impact statement, see s 49.  
26 (b) the significance and usefulness of the offender's assistance to  
27 law enforcement authorities, taking into account any evaluation

- 1 by the authorities of the assistance provided or undertaken to  
2 be provided;
- 3 (c) the truthfulness, completeness and reliability of any  
4 information or evidence provided by the offender;
- 5 (d) the nature and extent of the offender's assistance or promised  
6 assistance;
- 7 (e) the timeliness of the assistance or undertaking to assist;
- 8 (f) any benefits that the offender has gained or may gain because  
9 of the assistance or undertaking to assist;
- 10 (g) whether the offender will suffer harsher custodial conditions  
11 because of the assistance or undertaking to assist;
- 12 (h) any injury suffered by the offender or the offender's family, or  
13 any danger or risk of injury to the offender or the offender's  
14 family, because of the assistance or undertaking to assist;
- 15 (i) whether the assistance or promised assistance is in relation to  
16 the offence for which the offender is being sentenced or an  
17 unrelated offence;
- 18 (j) if the offender is to serve a sentence of imprisonment—the  
19 likelihood that the offender will commit further offences after  
20 release from imprisonment.
- 21 (4) A lesser penalty imposed under this section must not be  
22 unreasonably disproportionate to the nature and circumstances of  
23 the offence.

24 **37 Reduction of sentence—statement by court about penalty**

- 25 (1) This section applies if a court imposes a lesser penalty for an  
26 offence under section 35 (Reduction of sentence—guilty plea) or  
27 section 36 (Reduction of sentence—assistance to law enforcement  
28 authorities).

- 1 (2) The court must state—  
2 (a) the penalty (including any shorter nonparole period) it would  
3 otherwise have imposed; and  
4 (b) if the lesser penalty is imposed under section 36—the reason  
5 for the imposition of the lesser penalty.

6 **38 Sentences of imprisonment and uncompleted young  
7 offender orders**

- 8 (1) In this section:  
9 *young offender order* means an order under the *Children and Young  
10 People Act 1999*, section 96 (1) (g), (h), (i), (j), (k) or (l).

11 *Note* The relevant orders are a probation order, a community service order, an  
12 attendance centre order and certain residential and detention-related  
13 orders.

- 14 (2) This section applies in relation to an adult offender if, at the time of  
15 sentencing—  
16 (a) the offender is subject to a young offender order; and  
17 (b) the court is imposing a sentence that would be likely to bring  
18 the offender into contact with other adult offenders.

19 **Examples of sentences**

- 20 1 a sentence of imprisonment, including imprisonment to be served by  
21 periodic detention  
22 2 a good behaviour order requiring the offender to perform community  
23 service work

24 *Note* An example is part of the Act, is not exhaustive and may extend,  
25 but does not limit, the meaning of the provision in which it  
26 appears (see Legislation Act, s 126 and s 132).



- 1           (3) The court—  
2               (a) must, in deciding the term of the sentence, consider any  
3               remaining period during which the young offender order would  
4               remain in force if not discharged under paragraph (b); and  
5               (b) may, if appropriate, discharge the young offender order.

6   **39           Judgment after sentence deferred**

- 7           (1) If an offender is convicted of an offence and sentence is deferred,  
8           the court before which the offender was tried, or the Supreme Court,  
9           may sentence the offender for the offence at any time afterwards.  
10          (2) This section does not apply if the court has made a deferred  
11          sentence order.  
12          *Note*     Under a deferred sentence order, sentencing is deferred to a stated time  
13          (see s 27) unless the order is cancelled (see s 133).

1 **Part 4.2 Pre-sentence reports**

2 **40 Application—pt 4.2**

3 This part applies if either of the following applies to a person (the  
4 *offender*):

- 5 (a) a court finds the offender guilty of an offence;  
6 (b) the offender indicates to a court an intention to plead guilty to  
7 an offence.

8 **41 Pre-sentence reports—order**

9 (1) Before sentencing the offender, a court may—

- 10 (a) by order (a *pre-sentence report order*) direct the chief  
11 executive to prepare a report under this part (a *pre-sentence*  
12 *report*) for the offender; and  
13 (b) adjourn the proceeding for the report to be prepared.

14 *Note* If a form is approved under the *Court Procedures Act 2004* for a  
15 pre-sentence report order, the form must be used (see that Act, s 8 (2)).

16 (2) The court may, in the pre-sentence report order, direct that the  
17 pre-sentence report deal with any of the following:

- 18 (a) only with the pre-sentence matters under section 42 (3) stated  
19 in the order;  
20 (b) the offender's suitability under this Act for a deferred sentence  
21 order;  
22 (c) the offender's suitability under this Act to serve a sentence (or  
23 a part of a sentence) in a stated way, including any of the  
24 following:  
25 (i) by periodic detention;

- 1 (ii) by performing community service work;
- 2 (iii) by taking part in a stated rehabilitation program;
- 3 (d) anything else stated in the direction.
- 4 (3) The chief executive must arrange for an assessor to prepare a
- 5 pre-sentence report for the offender.
- 6 (4) In this part:
- 7 *assessor* means a person to whom the chief executive has, under the
- 8 *Public Sector Management Act 1994*, delegated the chief
- 9 executive's function under this part to prepare the pre-sentence
- 10 report.
- 11 *Note* For the making of delegations and the exercise of delegated functions,
- 12 see the Legislation Act, pt 19.4.

13 **42 Pre-sentence reports—contents**

- 14 (1) In preparing the pre-sentence report for the offender, the assessor
- 15 must include the following in the report:
- 16 (a) as far as practicable, details of—
- 17 (i) each of the pre-sentence matters that, on investigation,
- 18 appears to be relevant; or
- 19 (ii) if the pre-sentence report order includes a direction under
- 20 section 41 (2) (a)—each of the pre-sentence matters stated
- 21 in the order;
- 22 (b) if the pre-sentence report order includes a direction under
- 23 section 41 (2) (b)—the assessor's recommendation about the
- 24 offender's suitability for a deferred sentence order;
- 25 (c) if the pre-sentence report order includes a direction under
- 26 section 41 (2) (c)—the assessor's recommendation about the
- 27 offender's suitability to serve a sentence (or a part of a
- 28 sentence) in the way (or ways) stated in the direction;

- 1 (d) if the pre-sentence report order includes a direction under  
2 section 41 (2) (d)—as far as practicable, the matters stated in  
3 the direction.

4 **Examples for par (c)**

- 5 1 If the direction relates to periodic detention, the assessor may indicate the  
6 kind of conditions that might be recommended under section 11 (5).  
7 2 If the direction relates to taking part in a rehabilitation program, the assessor  
8 may indicate the kinds of conditions (in addition to the rehabilitation  
9 program condition) that might be included under section 13 (3).

10 *Note* An example is part of the Act, is not exhaustive and may extend, but  
11 does not limit, the meaning of the provision in which it appears (see  
12 Legislation Act, s 126 and s 132).

- 13 (2) The assessor may also include in the pre-sentence report—  
14 (a) if the pre-sentence report order includes a direction under  
15 section 41 (2) (b)—an indication of the kind of conditions that  
16 would be appropriate for the court to include in a deferred  
17 sentence order; and  
18 (b) if the pre-sentence report order includes a direction under  
19 section 41 (2) (c)—an indication of the kind of conditions that  
20 would be appropriate for the court to recommend for a  
21 sentence (or a part of a sentence) to be served in the way (or  
22 ways) stated in the direction; and  
23 (c) details of anything else the assessor considers relevant.

- 24 (3) For this section, the *pre-sentence matters* are—  
25 (a) the core matters (see subsection (4)); and  
26 (b) if the pre-sentence report order includes a direction under  
27 section 41 (2) (b)—the matters mentioned in section 116 (1)  
28 (Deferred sentence orders—eligibility); and  
29 (c) if the pre-sentence report order includes a direction under  
30 section 41 (2) (c) about the offender’s suitability to serve a  
31 sentence (or a part of a sentence) by—

- 1 (i) periodic detention—the matters mentioned in section 79  
2 (Periodic detention—pre-sentence report matters); and
- 3 (ii) performing community service work—the matters  
4 mentioned in section 90 (Community service—  
5 pre-sentence report matters); and
- 6 (iii) taking part in a stated rehabilitation program—the matters  
7 mentioned in section 98 (Rehabilitation programs—pre-  
8 sentence report matters).
- 9 (4) For subsection (3) (a), the following are the *core matters*:
- 10 (a) the offender's age;
- 11 (b) the offender's social history and background (including  
12 cultural background);
- 13 (c) the offender's medical and psychiatric history;
- 14 (d) the offender's educational background;
- 15 (e) the offender's employment history;
- 16 (f) the circumstances of any offences for which the offender is to  
17 be sentenced;
- 18 (g) the extent to which the offender is complying, or has complied,  
19 with any sentence;
- 20 (h) the offender's financial circumstances;
- 21 (i) any special needs of the offender;
- 22 (j) any courses, programs, treatment, therapy or other assistance  
23 that is available to the offender and from which the offender  
24 may benefit;
- 25 (k) any risk assessments made of the likelihood that the offender  
26 will commit further offences or of things (including

Section 43

---

- 1 circumstances) that may make the offender more likely to  
2 commit further offences;
- 3 (l) the assessor's opinion, and the basis for the opinion, about—
- 4 (i) the offender's attitude to the offence; and
- 5 (ii) the need to protect victims of the offence from violence or  
6 harassment by the offender; and
- 7 (iii) anything that may make the offender more likely to  
8 commit further offences; and
- 9 **Examples**
- 10 1 dependence on alcohol or a controlled drug
- 11 2 a gambling addiction
- 12 3 association with particular people
- 13 *Note* An example is part of the Act, is not exhaustive and may  
14 extend, but does not limit, the meaning of the provision in  
15 which it appears (see Legislation Act, s 126 and s 132).
- 16 (iv) the likelihood that the offender may commit further  
17 offences; and
- 18 (v) whether it would be appropriate to refer the offender for  
19 restorative justice under the *Crimes (Restorative Justice)*  
20 *Act 2004*.

21 **43 Pre-sentence reports—powers of assessors**

- 22 (1) In preparing the pre-sentence report for the offender, the assessor—
- 23 (a) may conduct any investigation the assessor considers  
24 appropriate; and
- 25 (b) may ask any of the following to provide information:
- 26 (i) an administrative unit;
- 27 (ii) a territory authority;

- 1 (iii) a statutory office-holder;
- 2 (iv) a victim of the offence;
- 3 (v) any other entity.
- 4 (2) If an entity mentioned in subsection (1) (b) (i), (ii) or (iii) is asked to  
5 provide information, the entity must promptly comply with the  
6 request.
- 7 (3) If an entity gives information honestly and with reasonable care in  
8 response to a request under subsection (1), the giving of the  
9 information is not—
- 10 (a) a breach of confidence, professional etiquette, ethics or a rule  
11 of professional misconduct; or
- 12 (b) a ground for a civil proceeding for defamation, malicious  
13 prosecution or conspiracy.
- 14 (4) This section does not limit any other power of the assessor to obtain  
15 information for the purposes of the pre-sentence report.
- 16 (5) A regulation may make provision in relation to—
- 17 (a) the preparation and provision of pre-sentence reports; and
- 18 (b) the conduct of assessments of an offender's suitability for a  
19 deferred sentence order or to serve a particular kind of sentence  
20 (including a kind mentioned in section 41 (2) (c) (Pre-sentence  
21 reports—order)).
- 22 (6) In this section:
- 23 *information* includes a document.
- 24 **44 Pre-sentence reports—provision to court**
- 25 The pre-sentence report may be given to the court either orally or in  
26 writing.

- 1     **45           Pre-sentence reports—availability of written reports**
- 2           (1) This section applies if the court has received a written pre-sentence  
3           report for the offender.
- 4           (2) The court must ensure that a copy of the report is made available to  
5           the following people at least 2 working days before the offender is  
6           to be sentenced:
- 7               (a) the prosecutor;
- 8               (b) any lawyer representing the offender;
- 9               (c) the offender, if—
- 10                   (i) the court has so directed; or
- 11                   (ii) the offender is not legally represented.
- 12           (3) For subsection (2), the court may make a copy of the report  
13           available to a person mentioned in the subsection by giving a copy  
14           of the report to the person.
- 15     **46           Pre-sentence reports—cross-examination**
- 16           (1) The prosecutor and the defence may cross-examine the assessor on  
17           the pre-sentence report given to the court by the assessor.
- 18           (2) In this section:
- 19               *defence* means—
- 20               (a) any lawyer representing the offender; or
- 21               (b) if the offender is not legally represented—the offender.



1 **Part 4.3** **Victim impact statements**

2 **47** **Definitions—pt 4.3**

3 In this part:

4 *because of*, an offence, means—

- 5 (a) as a result of, or in the course of, the commission of the  
6 offence; or  
7 (b) in the course of assisting a police officer in the exercise of the  
8 officer's power to arrest a person for the offence or to take  
9 action to prevent the offence.

10 *harm* includes—

- 11 (a) physical injury; and  
12 (b) mental injury or emotional suffering (including grief); and  
13 (c) pregnancy; and  
14 (d) economic loss; and  
15 (e) substantial impairment of rights accorded by law.

16 *victim*, of an offence, means—

- 17 (a) a person (a *primary victim*) who suffers harm because of the  
18 offence; or  
19 (b) if a primary victim dies because of the offence—a person who  
20 was financially or psychologically dependent on the primary  
21 victim immediately before the primary victim's death.

22 *victim impact statement*, for an offence, means a statement made by  
23 or for a victim of the offence that contains details of any harm  
24 suffered by the victim because of the offence.

- 1     **48**           **Application—pt 4.3**
- 2                   This part applies in relation to an offence if the offence is—
- 3                   (a) an indictable offence; or
- 4                   (b) an offence against the *Crimes Act 1900*, section 26A (Common
- 5                   assault—summary offence); or
- 6                   (c) any other offence prescribed by regulation for this paragraph.
- 7                   *Note*       An offence is an **indictable offence** if it is punishable by imprisonment
- 8                   for longer than 1 year or is declared by a law to be an indictable
- 9                   offence, and includes an indictable offence that is or may be dealt with
- 10                   summarily (see Legislation Act, s 190 (1) and (2)).
- 11     **49**           **Victim impact statements—who may make**
- 12                   (1) The following people may make a victim impact statement for the
- 13                   offence:
- 14                   (a) a victim of the offence;
- 15                   (b) a person who has parental responsibility for a victim of the
- 16                   offence;
- 17                   (c) a close family member of a victim of the offence;
- 18                   (d) a carer for a victim of the offence;
- 19                   (e) a person with an intimate personal relationship with a victim of
- 20                   the offence.
- 21                   (2) In this section:
- 22                   *person who has parental responsibility*—see the *Children and*
- 23                   *Young People Act 1999*, section 18 (1).
- 24     **50**           **Victim impact statements—oral or written**
- 25                   A victim impact statement for the offence may be made as—
- 26                   (a) a written statement signed by or for a victim of the offence; or

- 1 (b) a statement given orally in court by or for a victim of the  
2 offence.

3 **51 Victim impact statements—form and contents**

- 4 (1) A victim impact statement for the offence must identify the victim  
5 to whom it relates.
- 6 (2) The statement must include the full name of the person who makes  
7 the statement.
- 8 (3) If the person who makes the statement is not the victim (or the  
9 victim's representative)—
- 10 (a) the statement must indicate that the victim does not object to  
11 the statement being made to the court; and
- 12 (b) if practicable, the victim (or representative) must sign the  
13 statement, or make a separate written or oral statement to the  
14 court, to verify that the victim does not object.
- 15 (4) If the victim to whom the statement relates is not a primary victim,  
16 the statement must identify the primary victim and state the nature  
17 and length of the victim's relationship with the primary victim.
- 18 (5) If the statement is made by a person who is not the victim, the  
19 statement must indicate the nature and length of the person's  
20 relationship with the victim.
- 21 (6) The statement must not contain anything that is offensive,  
22 threatening, intimidating or harassing.
- 23 (7) This section does not prevent a victim impact statement being made  
24 by or for more than 1 victim.

25 **52 Victim impact statements—use in court**

- 26 (1) A victim impact statement may be—  
27 (a) tendered to the court; or

- 1 (b) made orally in court; or
- 2 (c) read out in court by the person who made the statement or
- 3 someone else (whether or not the statement is tendered to the
- 4 court).
- 5 (2) The statement may be given when the court considers appropriate—
- 6 (a) after the offender has been convicted; and
- 7 (b) before the offender is sentenced.
- 8 **53 Victim impact statements—effect**
- 9 (1) In deciding how the offender should be sentenced (if at all) for the
- 10 offence, the court—
- 11 (a) must consider any victim impact statement given to the court in
- 12 relation to the offence; and
- 13 (b) must not draw any inference about the harm suffered by a
- 14 victim from the fact that a victim impact statement is not given
- 15 to the court in relation to the offence.
- 16 (2) A victim impact statement must not be given in writing to the court
- 17 unless—
- 18 (a) the statement is made in accordance with section 51 (Victim
- 19 impact statements—form and contents); and
- 20 (b) a copy of the statement has been given to the defence.
- 21 (3) The defence may cross-examine a person who makes a victim
- 22 impact statement on the contents of the statement.
- 23 (4) However, if the offender is not legally represented, the offender may
- 24 cross-examine the person only if—
- 25 (a) the offender has indicated to the court the nature of the
- 26 proposed cross-examination; and
- 27 (b) the court gives the offender leave to cross-examine the person.

- 1           (5) In this section:
- 2                 *defence* means—
- 3                 (a) any lawyer representing the offender; or
- 4                 (b) if the offender is not legally represented—the offender.
- 5                 *given* includes made orally in court or read out in court under this
- 6                 part.

1     **Part 4.4**                     **Taking additional offences into**  
2                                     **account**

3     **54**             **Definitions—pt 4.4**

4             In this part:

5             *additional offence*—see section 55.

6             *list of additional offences*—see section 55.

7             *principal offence*—see section 55.

8             *sentence-related order*—see section 55.

9     **55**             **Application—pt 4.4**

10            (1) This part applies if—

11                   (a) an offender has been convicted or found guilty of an offence  
12                               (the *principal offence*); and

13                   (b) none of the following orders (each of which is a  
14                               *sentence-related order*) have been made for the offence:

15                               (i) an order imposing a penalty on the offender;

16                               (ii) a deferred sentence order;

17                               (iii) a non-conviction order;

18                               (iv) a suspended sentence order; and

19                   (c) the prosecutor files in the court sentencing the offender a  
20                               document (the *list of additional offences*) that lists other  
21                               offences (each of which is an *additional offence*) allegedly  
22                               committed by the offender.

23            (2) However, this part does not apply in relation to an offence  
24                               punishable by life imprisonment.

1    **56           List of additional offences**

- 2           (1) The list of additional offences must—
- 3               (a) indicate that the offences listed are offences that the offender
- 4               wants the court to take into account in making a
- 5               sentence-related order for the principal offence; and
- 6               (b) be signed by the director of public prosecutions and the
- 7               offender.
- 8           (2) A copy of the list of additional offences must be given to the
- 9           offender.

10    **57           Outstanding additional offences taken into account in**

11    **sentencing**

- 12           (1) Before making a sentence-related order for the principal offence, the
- 13           court must ask the offender whether the offender wants the court to
- 14           take any of the additional offences into account in relation to the
- 15           principal offence.
- 16           (2) The court may take an additional offence into account in making a
- 17           sentence-related order for the principal offence if—
- 18               (a) the offender admits guilt to the additional offence; and
- 19               (b) the offender confirms that the offender wants the additional
- 20               offence to be taken into account by the court in relation to the
- 21               principal offence; and
- 22               (c) the prosecutor consents to the additional offence being taken
- 23               into account.
- 24           (3) If the court takes an additional offence into account in relation to the
- 25           principal offence, any penalty imposed for the principal offence
- 26           must not exceed the maximum penalty the court could have imposed
- 27           for the principal offence if the additional offence had not been taken
- 28           into account.

Section 58

---

- 1 (4) The court may not take an additional offence into account if the  
2 court does not have jurisdiction to make a sentence-related order for  
3 the offence.
- 4 (5) For subsection (4), the court is taken to have jurisdiction to make a  
5 sentence-related order for an additional offence even if the  
6 jurisdiction may only be exercised with the offender's consent.
- 7 (6) To remove any doubt, subsection (4) does not prevent the Supreme  
8 Court from taking a summary offence into account.

9 **58 Ancillary orders relating to offences taken into account in**  
10 **sentencing**

- 11 (1) This section applies if the court takes an additional offence into  
12 account in making a sentence-related order for the offender for the  
13 principal offence.
- 14 (2) The court may make any ancillary order that it could have made if it  
15 had convicted the offender of the additional offence when it took the  
16 offence into account.
- 17 (3) To remove any doubt, the court may not make a separate sentence-  
18 related order for the additional offence.
- 19 (4) The offender has the same rights of appeal in relation to the making  
20 of the ancillary order as the offender would have had if the order  
21 had been made on the conviction of the offender for the additional  
22 offence.
- 23 (5) The ancillary order automatically lapses if the conviction or finding  
24 of guilt of the offender for the principal offence is reversed or set  
25 aside.
- 26 (6) In this section:  
27 *ancillary order*—see section 18 (5).



- 1    **59**        **Consequences of taking offences into account in**  
2                **sentencing**
- 3                (1) This section applies if the court takes an additional offence into  
4                account for the principal offence.
- 5                (2) The court must certify, on the list of additional offences, that the  
6                additional offence has been taken into account.
- 7                (3) A proceeding must not be started or continued in relation to the  
8                additional offence unless the conviction or finding of guilt for the  
9                principal offence is reversed or set aside.
- 10              (4) Subsection (3) does not prevent the court from taking the additional  
11              offence into account if the court, on a later occasion, makes another  
12              sentence-related order for the offender, or re-sentences the offender,  
13              for the principal offence.
- 14              (5) The offender's admission of guilt in relation to the additional  
15              offence is not admissible in evidence in a proceeding in relation  
16              to—
- 17                  (a) the additional offence; or
- 18                  (b) any other offence mentioned in the list of additional offences.
- 19              (6) The offender is not, for any purpose, taken to have been convicted  
20              or found guilty of the additional offence only because the additional  
21              offence is taken into account.
- 22    **60**        **Evidence of offences taken into account in sentencing**
- 23              (1) This section applies if the court takes an additional offence into  
24              account in making a sentence-related order for the offender for the  
25              principal offence.
- 26              (2) The fact that the additional offence has been taken into account is  
27              admissible in a criminal proceeding if—

Section 60

---

- 1 (a) the fact that the offender has been convicted or found guilty of  
2 the principal offence is admissible in the proceeding; and
- 3 (b) had the offender been convicted or found guilty of the  
4 additional offence, that fact would have been admissible in the  
5 proceeding.
- 6 (3) For subsection (2), a fact is *admissible* in a criminal proceeding if—
- 7 (a) reference may be made to the fact in the proceeding; or  
8 (b) evidence may be given of the fact in the proceeding.
- 9 (4) The fact that the additional offence has been taken into account may  
10 be proved in the same way as the finding of guilt or conviction for  
11 the principal offence.

1 **Part 4.5** **Correction and adjustment of**  
2 **penalties**

3 **61 Reopening proceedings to correct penalty errors**

- 4 (1) This section applies to a criminal proceeding (including a  
5 proceeding on appeal) in which a court has—  
6 (a) made a sentence-related order that is contrary to law; or  
7 (b) failed to make a sentence-related order that is required to be  
8 made by law.
- 9 (2) This section applies whether or not anyone has been convicted or  
10 found guilty of an offence in the proceeding.
- 11 (3) The court may reopen the proceeding (on the application of a party  
12 to the proceeding, or on its own initiative) and may, after giving the  
13 parties an opportunity to be heard, do either or both of the  
14 following:  
15 (a) make a sentence-related order that is in accordance with law;  
16 (b) amend any relevant finding of guilt, conviction, sentence or  
17 order.
- 18 (4) For this section, the court may issue a warrant for the arrest of a  
19 person charged in the proceeding if—  
20 (a) the court considers that the person will not appear unless the  
21 warrant is issued; or  
22 (b) the person fails to appear when the court calls on the person to  
23 appear.
- 24 (5) For an appeal under any Act against a sentence-related order made  
25 under this section, the time within which the appeal must be made  
26 starts on the day the order is made.

- 1           (6) However, this section does not otherwise affect any right of appeal.
- 2           (7) In this section:
- 3                 *sentence-related order*—
- 4                 (a) see section 55 (Application—pt 4.4); and
- 5                 (b) includes an ancillary order within the meaning of section 58
- 6                     (Ancillary orders relating to offences taken into account in
- 7                     sentencing).

1 **Chapter 5 Imprisonment**

2 **Part 5.1 Imprisonment—start and end of**  
3 **sentences**

4 **62 Start and end of sentences—general rule**

- 5 (1) A sentence of imprisonment starts—  
6 (a) on the day the sentence is imposed; or  
7 (b) if an offender is not in custody—on the day the offender  
8 becomes subject to lawful custody.
- 9 (2) However, subsection (1) is subject to—  
10 (a) the following provisions of this Act:  
11 (i) section 11 (Periodic detention);  
12 (ii) section 31 (Combination sentences—start and end);  
13 (iii) section 63 (Start of sentences—backdated sentences);  
14 (iv) part 5.3 (Imprisonment—concurrent and consecutive  
15 sentences); and  
16 (b) the *Crimes (Sentence Administration) Act 2005*.
- 17 (3) A sentence of imprisonment that starts on a day starts at the  
18 beginning of that day.
- 19 (4) A sentence of imprisonment that ends on a day ends at the end of  
20 that day.
- 21 (5) In this section:  
22 *sentence of imprisonment* does not include a sentence of  
23 imprisonment that is fully suspended.

- 1     **63           Start of sentences—backdated sentences**
- 2           (1) The court may direct that a sentence of imprisonment is taken to
- 3           have started on a day before the day the sentence is imposed.
- 4           (2) For subsection (1), the court must take into account any period
- 5           during which the offender has already been held in custody in
- 6           relation to the offence.
- 7           (3) However, subsection (2) does not apply to—
- 8               (a) a period of custody of less than 1 day; or
- 9               (b) a sentence of imprisonment of less than 1 day; or
- 10              (c) a sentence of imprisonment that is fully suspended; or
- 11              (d) the suspended part of a partly suspended sentence of
- 12              imprisonment.
- 13           (4) If the offender is charged with a series of offences committed on
- 14           different occasions and has been in custody continuously since
- 15           arrest, the period of custody for subsection (2) must be worked out
- 16           from the time of the offender’s arrest.
- 17           (5) Subsection (4) applies even if the offender is not convicted or found
- 18           guilty of—
- 19               (a) the offence for which the offender was first arrested; or
- 20               (b) any particular offence or offences in the series.

1 **Part 5.2** **Imprisonment—nonparole**  
2 **periods**

3 **64 Application—pt 5.2**

- 4 (1) This part applies to a sentence of imprisonment imposed by a court  
5 on an offender for an offence, other than an excluded sentence of  
6 imprisonment.
- 7 (2) However, if the sentence of imprisonment includes a periodic  
8 detention period, this part applies only to that part of the sentence to  
9 be served otherwise than by periodic detention.
- 10 (3) In this section:

11 *excluded sentence of imprisonment* means—

- 12 (a) a sentence of imprisonment that is fully suspended; or  
13 (b) a sentence of imprisonment to be served fully by periodic  
14 detention; or  
15 (c) a sentence of imprisonment imposed in default of payment of a  
16 fine; or  
17 (d) a sentence of imprisonment imposed for an offence committed  
18 while in lawful custody; or  
19 (e) a sentence of life imprisonment.

20 *fine*—see the *Magistrates Court Act 1930*, section 146.

21 **65 Nonparole periods—court to set**

- 22 (1) This section applies if the court sentences the offender to a term of  
23 imprisonment of 1 year or longer, or 2 or more terms of  
24 imprisonment that total 1 year or longer.

Section 66

---

- 1 (2) The court must set a period (a *nonparole period*) during which the  
2 offender is not eligible to be released on parole.
- 3 *Note* If the offender is released on parole, the sentence is not discharged  
4 unless the parole is completed without the parole order being cancelled  
5 (see *Crimes (Sentence Administration) Act 2005*).
- 6 (3) When the court sets the nonparole period, the court must state when  
7 the nonparole period starts and ends.
- 8 *Note* A sentence may be backdated to account for time already held in  
9 custody (see s 63).
- 10 (4) However, the court may decline to set a nonparole period in  
11 sentencing the offender if the court considers that it would be  
12 inappropriate to set a nonparole period having regard to the nature  
13 of the offence or offences and the offender's antecedents.
- 14 (5) If the offender is subject to a sentence of life imprisonment, the  
15 court must not set a nonparole period for any sentence of  
16 imprisonment that is imposed on the offender.
- 17 (6) If the sentence of imprisonment is partly suspended, the period for  
18 which it is suspended must be disregarded for this section.

19 **66 Nonparole periods—setting if sentence currently being**  
20 **served**

- 21 (1) This section applies if—
- 22 (a) the offender is serving a sentence of imprisonment (the  
23 *existing sentence*); and
- 24 (b) the offender is sentenced to a further term of imprisonment (the  
25 *primary sentence*).
- 26 *Note* Pt 5.3 deals with whether the primary sentence is to be served  
27 concurrently or consecutively (or partly concurrently and partly  
28 consecutively) with the existing sentence.



- 1 (2) Section 65 (Nonparole periods—court to set) applies as if the court  
2 that imposes the primary sentence had sentenced the person to  
3 imprisonment for a term equal to the total of the terms of the  
4 existing sentence and the primary sentence.
- 5 (3) The imposition of the primary sentence automatically cancels any  
6 nonparole period set for the existing sentence.
- 7 (4) Any nonparole period set for the primary sentence must not make  
8 the offender eligible to be released on parole earlier than if the  
9 primary sentence had not been imposed.

10 **67 Nonparole periods—recommended conditions**

11 In sentencing the offender to imprisonment, the court may  
12 recommend conditions for the offender’s parole.

13 *Note* The sentence administration board must consider any recommendation  
14 made by the court but is not bound to follow the recommendation (see  
15 *Crimes (Sentence Administration) Act 2005*).

16 **68 Nonparole periods—review of decision on nonparole**  
17 **period**

- 18 (1) This section applies if the court fails to set, or fails to set properly, a  
19 nonparole period for a sentence of imprisonment.
- 20 (2) The court may set a nonparole period on the application of any of  
21 the following people:
- 22 (a) the Attorney-General;
- 23 (b) the director of public prosecutions;
- 24 (c) the secretary of the sentence administration board;
- 25 (d) the offender.

1     **Part 5.3**                             **Imprisonment—concurrent and**  
2   **consecutive sentences**

3     **69**             **Definitions—pt 5.3**

4             In this part:

5             *existing sentence*—see section 70 (1).

6             *fine*—see the *Magistrates Court Act 1930*, section 146.

7             *primary sentence*—see section 70 (1).

8     **70**             **Application—pt 5.3**

9             (1) This part applies to a sentence of imprisonment (a *primary*  
10             *sentence*) imposed by a court on an offender if—

11             (a) any of the following apply in relation to the offender:

12                     (i) when the primary sentence is imposed, the offender is  
13                     serving another sentence of imprisonment (an *existing*  
14                     *sentence*);

15                     (ii) the offender has been sentenced to another sentence of  
16                     imprisonment (also an *existing sentence*) but, when the  
17                     primary sentence is imposed, the other sentence has not  
18                     yet started;

19                     (iii) the offender is sentenced to another sentence of  
20                     imprisonment (also an *existing sentence*) in the same  
21                     proceeding; and

22             (b) the existing sentence is for an offence against a territory law;  
23             and

24             (c) the primary sentence is not fully suspended.

- 1           (2) In this section:  
2           *sentence of imprisonment*—  
3           (a) does not include any nonparole period that has been set for the  
4           primary sentence; but  
5           (b) includes an order committing a young person to an institution  
6           under the *Children and Young People Act 1999*,  
7           section 96 (1) (k) or (l).
- 8   **71           Concurrent and consecutive sentences—general rule**
- 9           (1) In the absence of a direction under subsection (2), the primary  
10          sentence must be served concurrently with the existing sentence.
- 11          (2) The court may direct that the primary sentence be served  
12          consecutively (or partly concurrently and partly consecutively) with  
13          the existing sentence.
- 14          (3) This section is subject to the following provisions:
- 15               (a) section 38 (Sentences of imprisonment and uncompleted young  
16               offender orders); and
- 17               (b) section 72 (Concurrent and consecutive sentences—offences in  
18               custody or unlawfully at large);
- 19               (c) section 73 (Concurrent and consecutive sentences—fine  
20               default offences);
- 21               (d) section 80 (Periodic detention—concurrent and consecutive  
22               periods).

- 1     **72**           **Concurrent and consecutive sentences—offences in**  
2                   **custody or unlawfully at large**
- 3           (1) This section applies if the primary sentence is imposed on the  
4           offender for any of the following offences:
- 5                   (a) an offence committed while the offender was in lawful custody  
6                   or unlawfully at large;
- 7                   (b) an offence involving an escape from lawful custody.
- 8           (2) In the absence of a direction under subsection (3), the primary  
9           sentence must be served consecutively with the existing sentence of  
10           imprisonment.
- 11           (3) The court may direct that the primary sentence be served  
12           concurrently (or partly concurrently and partly consecutively) with  
13           the existing sentence.
- 14           (4) Unless the court considers that special circumstances apply, the  
15           court must not give a direction under subsection (3) if the primary  
16           sentence is an offence that involves causing harm, or threatening to  
17           cause harm, to a corrections officer.
- 18     **73**           **Concurrent and consecutive sentences—fine default**  
19                   **offences**
- 20           (1) This section applies if the primary sentence is imposed in default of  
21           payment of a fine.
- 22           (2) In the absence of a direction under subsection (3), the primary  
23           sentence must be served—
- 24                   (a) consecutively with an existing sentence in default of payment  
25                   of a fine; and
- 26                   (b) concurrently with any other existing sentence.

- 1 (3) The court may direct that the primary sentence be served  
2 concurrently or consecutively (or partly concurrently and partly  
3 consecutively) with the existing sentence.

4 **74 Amendment of start of sentences on setting aside or**  
5 **amending other sentences**

- 6 (1) If a court sets aside or amends a sentence of imprisonment imposed  
7 on the offender (whether on appeal or otherwise), the court may  
8 amend the starting day of any other sentence that has been imposed  
9 on the offender by the court or another court.
- 10 (2) If the offender is subject to 2 or more sentences, this section applies  
11 to each of them.
- 12 (3) The court may amend the starting day of a sentence under this  
13 section on its own initiative, or the application of a party to the  
14 proceeding on the setting aside or amendment of the other sentence.
- 15 (4) An appeal does not lie only because the starting day of a sentence is  
16 amended under this section.
- 17 (5) The term of a sentence, or the nonparole period of a sentence, must  
18 not be amended under this section.

19 **75 Previous sentences to be noted in new sentence**

- 20 (1) If the court imposes the primary sentence consecutively (or partly  
21 concurrently and partly consecutively) with an existing sentence, the  
22 court must include in the record of the primary sentence details of  
23 each existing sentence, including—
- 24 (a) the starting day of the existing sentence (or the likely starting  
25 day of a sentence that has not yet started); and
- 26 (b) the term of the existing sentence.
- 27 (2) Failure to comply with this section does not invalidate the primary  
28 sentence or the existing sentence.

1 **Part 5.4** **Periodic detention**

2 **76** **Application—pt 5.4**

3 This part applies if a court is considering whether to set a periodic  
4 detention period for an offender for an offence.

5 **77** **Periodic detention—eligibility**

6 (1) The court must not set a periodic detention period for the offender  
7 unless satisfied that—

8 (a) periodic detention is suitable for the offender (see section 78);  
9 and

10 (b) it is appropriate for the offender to serve all or part of the  
11 sentence by periodic detention; and

12 (c) there are appropriate facilities available at a correctional centre  
13 for the offender to serve any period of periodic detention set by  
14 the court; and

15 (d) the offender has signed an undertaking to comply with the  
16 offender's periodic detention obligations under the *Crimes*  
17 (*Sentence Administration*) Act 2005.

18 (2) The court may decline to set a periodic detention period for the  
19 offender if—

20 (a) the court asks the offender to undergo a medical examination  
21 by a doctor, as directed by the court; and

22 (b) the offender does not undergo the examination in accordance  
23 with the direction.

- 1    **78           Periodic detention—suitability**
- 2           (1) The court must not set a periodic detention period for the offender
- 3                unless a pre-sentence report is given to the court about the
- 4                offender’s suitability to serve a sentence (or a part of a sentence) by
- 5                periodic detention.
- 6           (2) In deciding whether to set a periodic detention period for the
- 7                offender, the court must consider the following:
- 8                (a) the pre-sentence report;
- 9                (b) any medical report about the offender given to the court;
- 10              (c) any evidence given by the person who prepared the pre-
- 11                sentence report;
- 12              (d) any evidence given by a corrections officer about the offender.
- 13           (3) Subsection (2) does not limit the matters that the court may
- 14                consider.
- 15           (4) In considering the pre-sentence report, the court must consider any
- 16                indicators of unsuitability mentioned in table 86, column 3 that are
- 17                stated in the report to apply to the offender.
- 18           (5) The court may set, or decline to set, a periodic detention period for
- 19                the offender despite—
- 20                (a) any recommendation in the pre-sentence report about the
- 21                offender’s suitability to serve a sentence (or a part of a
- 22                sentence) by periodic detention; or
- 23                (b) any evidence given by the person who prepared the
- 24                pre-sentence report or a corrections officer.
- 25           (6) The court must record reasons for its decision to set, or decline to
- 26                set, a periodic detention period for the offender if—

Section 79

---

- 1 (a) the pre-sentence report recommends that the offender is  
2 suitable but the court decides not to set a periodic detention  
3 period for the offender; or
- 4 (b) the pre-sentence report recommends that the offender is not  
5 suitable but the court decides to set a periodic detention period  
6 for the offender.
- 7 (7) Failure to comply with subsection (6) does not invalidate the  
8 periodic detention order.

9 **79 Periodic detention—pre-sentence report matters**

10 For section 42 (3) (c) (ii) (Pre-sentence reports—contents), the  
11 matters for assessing the offender’s suitability to serve a sentence  
12 (or a part of a sentence) by periodic detention are the matters  
13 mentioned in table 79, column 2.

14 **Table 79 Assessment of suitability—periodic detention**

<b>column 1 item</b>	<b>column 2 matter</b>	<b>column 3 indication of unsuitability</b>
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to report for periodic detention
4	criminal record	serious criminal record
5	employment and personal circumstances	potential impracticability of regular reporting for periodic detention

---



- 1    **80           Periodic detention—concurrent and consecutive periods**
- 2           (1) This section applies if—
- 3               (a) the court is considering whether to set a periodic detention
- 4               period (a *new period*) for the offender; and
- 5               (b) the offender is currently serving a sentence of imprisonment
- 6               for another offence by periodic detention.
- 7           *Note*     Pt 5.3 deals with the imposition of 2 sentences of imprisonment on the
- 8               offender.
- 9           (2) If the court sets a new period, the new period must be stated to end
- 10           no later than 2 years after the day it is made (no matter when the
- 11           new period is to take effect).

1 **Part 5.5** **Imprisonment—explanation and**  
2 **information**

3 **81 Application—pt 5.5**

4 This part applies if—

- 5 (a) an offender is convicted of an offence; and  
6 (b) a court sentences the offender to imprisonment for the offence;  
7 and  
8 (c) the sentence of imprisonment is not fully suspended.

9 **82 Imprisonment—explanation to offender**

10 (1) The court must ensure that reasonable steps are taken to explain to  
11 the offender (and in language the offender can readily understand)—

- 12 (a) the reason why the sentence of imprisonment is imposed, and  
13 why no penalty other than imprisonment is appropriate; and  
14 (b) the purpose of the sentence; and  
15 (c) if the offender is to serve all or part of the sentence by full-time  
16 detention in a correctional centre—in general terms, the  
17 offender’s obligations as a full-time detainee under the *Crimes*  
18 *(Sentence Administration) Act 2005* and the consequences if  
19 the offender breaches the obligations; and

20 *Note* An offender may breach the obligations by failing to comply with  
21 them (see Legislation Act, dict, pt 1, def *breach*).

- 22 (d) if the order sentencing the offender to imprisonment sets a  
23 periodic detention period—in general terms, the offender’s  
24 periodic detention obligations under the *Crimes (Sentence*  
25 *Administration) Act 2005* and the consequences if the offender  
26 breaches the obligations; and

- 1 (e) the day when the sentence starts or is taken to have started; and  
2 *Note* For examples of the operation of this paragraph, see the end of  
3 this subsection.
- 4 (f) if a suspended sentence order is made for the offender  
5 suspending the sentence in part—in general terms, the effect of  
6 the suspension of the sentence; and
- 7 *Note* Explanations for the offender and any surety of the effect of  
8 entering into a good behaviour order are required under pt 6.3.
- 9 (g) the earliest day (on the basis of the information currently  
10 available to the court) that the offender will become entitled to  
11 be released from detention or be eligible to be released on  
12 parole, having regard to—
- 13 (i) each sentence of imprisonment to which the offender is  
14 subject; and
- 15 (ii) any applicable nonparole period; and
- 16 (h) if a nonparole period is set for the sentence—that, if the  
17 offender is released on parole, the offender’s release will be  
18 subject to a parole order and any conditions included in the  
19 order.

20 **Examples for par (e)**

- 21 1 A court sentences Rick to 7 days imprisonment. The sentence is imposed on  
22 a Monday. Rick is not subject to any other sentence of imprisonment.  
23 To comply with paragraph (e), the court should explain to Rick that the  
24 sentence starts on the Monday when it is imposed and that the earliest day  
25 when Rick will become entitled to be released from detention is the  
26 following Monday.
- 27 2 A court sentences Ken to 12 months imprisonment. The sentence is imposed  
28 on 5 May 2005. The court has set a nonparole period of 9 months. Ken is not  
29 subject to any other sentence of imprisonment. Because Ken has been  
30 remanded in custody for sentencing since 27 April 2005, the court has  
31 backdated the start of the sentence to that date.

Section 83

---

- 1 To comply with paragraph (e), the court should explain to Ken that the  
2 sentence is taken to have started on 27 April 2005 and that the earliest date  
3 when Ken will become eligible to be released on parole is 27 January 2006.
- 4 3 On 1 July 2004, Colleen began serving a 2-year sentence of imprisonment  
5 for an offence. The nonparole period for the sentence was 18 months  
6 (Colleen would be eligible to be released on parole on 1 January 2006).  
7 Colleen is later convicted of another offence, with a further sentence of  
8 2 years to start from 1 January 2005, to be served partly concurrently and  
9 partly consecutively with the first sentence (under s 71 (Concurrent and  
10 consecutive sentences—general rule)). The court cancels the first nonparole  
11 period and sets a new nonparole period of 18 months from 1 January 2005  
12 (under s 66 (Nonparole periods—setting if sentence currently being served)).  
13 To comply with paragraph (e), the court should explain to Colleen that the  
14 sentence for the 2nd offence starts on 1 January 2005 and ends on  
15 1 January 2007, that it will be served partly concurrently and partly  
16 consecutively with her current sentence, and that the earliest date when  
17 Colleen will become eligible to be released on parole is now 1 July 2006.
- 18 *Note* An example is part of the Act, is not exhaustive and may extend, but  
19 does not limit, the meaning of the provision in which it appears (see  
20 Legislation Act, s 126 and s 132).
- 21 (2) Failure to comply with this section does not invalidate the sentence  
22 of imprisonment.

23 **83 Imprisonment—written record of explanation**

- 24 (1) The court must ensure that a written record of the explanation under  
25 section 82 is given to the offender or the offender’s lawyer as soon  
26 as practicable after (but no later than 10 working days after the day)  
27 the explanation is given under that section.

28 **Example of written record**

29 a copy of the transcript of the explanation

- 30 *Note* An example is part of the Act, is not exhaustive and may extend, but  
31 does not limit, the meaning of the provision in which it appears (see  
32 Legislation Act, s 126 and s 132).

- 33 (2) Failure to comply with this section does not invalidate the sentence  
34 of imprisonment.

- 
- 1     **84           Imprisonment—official notice of sentence**
- 2           (1) As soon as practicable after (but no later than 10 working days after
- 3           the day) the court makes the order sentencing the offender to
- 4           imprisonment, the court must ensure that written notice of the order,
- 5           together with a copy of the order, is given to—
- 6           (a) the offender; and
- 7           (b) the chief executive; and
- 8           (c) if the court sets a periodic detention period or nonparole period
- 9           for the sentence—the secretary of the sentence administration
- 10          board.
- 11          *Note 1* If a form is approved under the *Court Procedures Act 2004* for this
- 12          provision, the form must be used (see that Act, s 8 (2)).
- 13          *Note 2* If the order is part of a combination sentence, a single notice may be
- 14          given for the sentences (see Legislation Act, s 49).
- 15          (2) The notice must include the following information:
- 16          (a) when the sentence starts or is taken to have started;
- 17          (b) when the sentence ends;
- 18          (c) whether the sentence is to be served as full-time detention,
- 19          periodic detention or a combination of these kinds of
- 20          imprisonment;
- 21          (d) if the sentence includes more than 1 kind of imprisonment—
- 22          when each kind of imprisonment starts and ends;
- 23          (e) if a suspended sentence order is made for a part of the
- 24          sentence—when the suspended part of the sentence starts and
- 25          ends;
- 26          (f) if the order sets a periodic detention period the offender (the
- 27          *periodic detainee*)—

Section 84

---

- 1 (i) when and where the periodic detainee is first to report for  
2 periodic detention; and
- 3 (ii) any conditions recommended by the court for the  
4 offender's periodic detention;
- 5 (g) if a nonparole period is set for the sentence—the nonparole  
6 period and when it starts and ends;
- 7 (h) the earliest day (on the basis of the information currently  
8 available to the court) that the offender will become entitled to  
9 be released from detention or be eligible to be released on  
10 parole.
- 11 (3) The court may remand the periodic detainee in custody until the  
12 detainee is given the notice.
- 13 (4) Failure to comply with this section does not invalidate the sentence  
14 of imprisonment.

1     **Chapter 6**                   **Good behaviour orders**

2     **Part 6.1**                   **Good behaviour orders—**  
3                                   **community service conditions**

4     **85**                   **Meaning of *community service condition*—pt 6.1**

5                   In this Act:

6                   ***community service condition***, of a good behaviour order for an  
7                   offender, means a condition included in the order that the offender  
8                   perform community service work.

9                   *Note 1*     The number of hours that may be required to be performed for a  
10                  community service condition is at least 20 and not more than 500 hours  
11                  (see s 91).

12                  *Note 2*     ***Community service work*** is work prescribed by regulation under the  
13                  *Crimes (Sentence Administration) Act 2005*.

14     **86**                   **Application—pt 6.1**

15                   This part applies if a court is considering whether to include a  
16                   community service condition in a good behaviour order for an  
17                   offender.

18     **87**                   **Community service—convicted offenders only**

19                   The court must not include a community service condition in the  
20                   good behaviour order unless the offender is convicted of the offence  
21                   for which the order is made.

22                   *Note*     A good behaviour order under s 17 (2) (b) (Non-conviction orders—  
23                  general) cannot include a community service condition because the  
24                  offender is found guilty, but not convicted, of the offence.

- 1     **88           Community service—eligibility**
- 2           (1) The court must not include a community service condition in the  
3           good behaviour order unless satisfied that—
- 4               (a) community service work is suitable for the offender (see  
5               section 89); and
- 6               (b) it is appropriate that the offender be required to perform  
7               community service work.
- 8           (2) The court may decline to include a community service condition in  
9           the good behaviour order if—
- 10               (a) the court asks the offender to undergo a medical examination  
11               by a doctor, as directed by the court; and
- 12               (b) the offender does not undergo the examination in accordance  
13               with the direction.
- 14     **89           Community service—suitability**
- 15           (1) The court must not include a community service condition in the  
16           good behaviour order unless a pre-sentence report is given to the  
17           court about the offender’s suitability to serve a sentence (or a part of  
18           a sentence) by performing community service work.
- 19           (2) In deciding whether to include a community service condition in the  
20           good behaviour order, the court must consider the following:
- 21               (a) the pre-sentence report;
- 22               (b) any medical report about the offender given to the court;
- 23               (c) any evidence given by the person who prepared the  
24               pre-sentence report;
- 25               (d) any evidence given by a corrections officer about the offender.
- 26           (3) Subsection (2) does not limit the matters that the court may  
27           consider.



- 1 (4) In considering the pre-sentence report, the court must consider any  
2 indicators of unsuitability mentioned in table 90, column 3 that are  
3 stated in the report to apply to the offender.
- 4 (5) The court may include, or decline to include, a community service  
5 condition in a good behaviour order for the offender despite—
- 6 (a) any recommendation in the pre-sentence report about the  
7 offender's suitability to serve a sentence (or a part of a  
8 sentence) by performing community service work; or
- 9 (b) any evidence given by the person who prepared the  
10 pre-sentence report or a corrections officer.
- 11 (6) The court must record reasons for its decision to include, or decline  
12 to include, a community service condition in the good behaviour  
13 order if—
- 14 (a) the pre-sentence report recommends that the offender is  
15 suitable but the court decides not to include a community  
16 service condition; or
- 17 (b) the pre-sentence report recommends that the offender is not  
18 suitable but the court decides to include a community service  
19 condition.
- 20 (7) Failure to comply with subsection (6) does not invalidate the good  
21 behaviour order.

22 **90 Community service—pre-sentence report matters**

23 For section 42 (3) (c) (iii) (Pre-sentence reports—contents), the  
24 matters for assessing the offender's suitability to serve a sentence  
25 (or a part of a sentence) by performing community service work are  
26 the matters mentioned in table 90, column 2.

1

**Table 90 Assessment of suitability—community service work**

<b>column 1 item</b>	<b>column 2 matter</b>	<b>column 3 indication of unsuitability</b>
1	degree of dependence on alcohol or a controlled drug	major problem with alcohol or a controlled drug
2	psychiatric or psychological condition	major psychiatric or psychological disorder
3	medical condition	potential unfitness to perform community service work
4	criminal record	serious criminal record
5	employment and personal circumstances	potential impracticability of regular reporting for community service work

2

**91 Community service—hours to be performed**

3

(1) The number of hours of community service work required to be performed for a community service condition in the good behaviour order must be at least 20 hours and not more than 500 hours.

4

5

6

(2) The period during which the community service work is required to be completed under the community service condition must be at least—

7

8

9

(a) if fewer than 250 hours work is required—12 months; or

10

(b) if 250 or more hours work is required—24 months.

- 1    **92           Community service—concurrent and consecutive orders**
- 2           (1) This section applies if the offender is currently subject to a
- 3           community service condition under a good behaviour order (an
- 4           *existing order*).
- 5           (2) If the court makes a further good behaviour order that includes a
- 6           community service condition (a *new order*), the court may direct
- 7           that the hours of community service work to be performed by the
- 8           offender under the new order run concurrently or consecutively, or
- 9           partly concurrently and partly consecutively, with the hours of
- 10          community service work remaining to be performed under the
- 11          existing order.
- 12          (3) However, the total of the hours to be performed under the new order
- 13          and those remaining to be performed under the existing order must
- 14          not be more than 500.

1 **Part 6.2** **Good behaviour orders—**  
2 **rehabilitation program conditions**

3 **93** **Definitions—pt 6.2**

4 In this Act:

5 *rehabilitation program*, for a good behaviour order, means a  
6 program prescribed by regulation for the rehabilitation of offenders.

7 *rehabilitation program condition*, of a good behaviour order for an  
8 offender, means a condition included in the order that an offender  
9 undertake a rehabilitation program.

10 **94** **Application—pt 6.2**

11 This part applies if a court is considering whether to include a  
12 rehabilitation program condition in a good behaviour order for an  
13 offender.

14 **95** **Rehabilitation programs—probation condition required**

15 If the court includes a rehabilitation program condition in the good  
16 behaviour order, the court must also include a probation condition in  
17 the order.

18 **96** **Rehabilitation programs—eligibility**

19 (1) The court must not include a rehabilitation program condition in the  
20 good behaviour order unless satisfied that—

21 (a) a rehabilitation program of a particular kind is suitable for the  
22 offender; and

23 (b) it is appropriate that the offender undertake a rehabilitation  
24 program of that kind; and

- 1 (c) a place for the offender in a program of that kind is available or  
2 will become available within a reasonable time.
- 3 (2) The court may decline to include a rehabilitation program condition  
4 in the good behaviour order if—
- 5 (a) the court asks the offender to undergo a medical examination  
6 by a doctor, as directed by the court; and
- 7 (b) the offender does not undergo the examination in accordance  
8 with the direction.

9 **97 Rehabilitation programs—suitability**

- 10 (1) The court must not include a rehabilitation program condition in the  
11 good behaviour order unless—
- 12 (a) a pre-sentence report is given to the court about the offender’s  
13 suitability to take part in a rehabilitation program; or
- 14 (b) there is some other information (*relevant sentencing*  
15 *information*) before the court about the nature of the program  
16 and its suitability for the offender that justifies including the  
17 condition in the good behaviour order.

18 **Example of relevant sentencing information that may justify making an**  
19 **order**

20 a letter offering the offender a place in a rehabilitation program that  
21 explains the nature of the program and why it would be suitable for the  
22 offender

23 *Note* An example is part of the Act, is not exhaustive and may extend,  
24 but does not limit, the meaning of the provision in which it  
25 appears (see Legislation Act, s 126 and s 132).

- 26 (2) In deciding whether to include a rehabilitation program condition in  
27 the good behaviour order, the court must consider the following:
- 28 (a) any pre-sentence report or relevant sentencing information for  
29 the offender given to the court;

Section 97

---

- 1 (b) any medical report about the offender given to the court;
- 2 (c) any evidence given by the person who prepared a pre-sentence  
3 report for the offender or who gave relevant sentencing  
4 information to the court;
- 5 (d) any evidence given by a corrections officer about the offender.
- 6 (3) Subsection (2) does not limit the matters that the court may  
7 consider.
- 8 (4) The court may include, or decline to include, a rehabilitation  
9 program condition in the good behaviour order despite—
- 10 (a) any recommendation in any pre-sentence report, or indication  
11 in relevant sentencing information, about the offender's  
12 suitability to serve a sentence (or a part of a sentence) by  
13 taking part in a rehabilitation program; or
- 14 (b) any evidence given by the person who prepared any  
15 pre-sentence report for the offender or who gave relevant  
16 sentencing information to the court; or
- 17 (c) any evidence given by a corrections officer.
- 18 (5) The court must record reasons for its decision to include, or decline  
19 to include, a rehabilitation program condition in the good behaviour  
20 order if—
- 21 (a) any pre-sentence report recommends, or relevant sentencing  
22 information indicates, that the offender is suitable but the court  
23 decides not to include a rehabilitation program condition; or
- 24 (b) any pre-sentence report recommends, or relevant sentencing  
25 information indicates, that the offender is not suitable but the  
26 court decides to include a rehabilitation program condition.
- 27 (6) Failure to comply with subsection (5) does not invalidate the good  
28 behaviour order.

- 
- 1    **98**           **Rehabilitation programs—pre-sentence report matters**
- 2           For section 42 (3) (c) (iv) (Pre-sentence reports—contents), the
- 3           matters for assessing the offender’s suitability to serve a sentence
- 4           (or a part of a sentence) by taking part in a rehabilitation program
- 5           are whether the offender was—
- 6           (a) under the influence of alcohol or a controlled drug when the
- 7           offence was committed; or
- 8           (b) motivated to commit the offence by a desire—
- 9                 (i) to administer a controlled drug to himself or herself; or
- 10               (ii) to obtain a controlled drug for self-administration; or
- 11               (iii) to obtain resources to enable the offender to obtain a
- 12               controlled drug for self-administration.
- 13    **99**           **Rehabilitation programs—maximum period**
- 14           A rehabilitation program condition included in the good behaviour
- 15           order must not require the offender to take part in a rehabilitation
- 16           program for longer than 3 years.
- 17    **100**          **Rehabilitation programs—concurrent and consecutive**
- 18           **orders**
- 19           (1) This section applies if the offender is currently subject to a
- 20           rehabilitation program condition under a good behaviour order (an
- 21           *existing order*).
- 22           (2) If the court makes a further good behaviour order that includes a
- 23           rehabilitation program condition (a *new order*), the court may direct
- 24           that the new order operate concurrently or consecutively, or partly
- 25           concurrently and partly consecutively, with the existing order.
- 26           (3) However, the new order must not be stated to end later than 3 years
- 27           after the day the new order is made, irrespective of when the order is
- 28           to take effect.

1 **Part 6.3** **Good behaviour orders—**  
2 **explanations and official notice**

3 **101 Application—pt 6.3**

4 This part applies if a court makes a good behaviour order for an  
5 offender.

6 **102 Good behaviour orders—explanation to offenders**

7 (1) The court must ensure that reasonable steps are taken to explain to  
8 the offender in general terms (and in language the offender can  
9 readily understand)—

10 (a) the nature and conditions of the good behaviour order; and

11 (b) the offender's good behaviour obligations under the *Crimes*  
12 *(Sentence Administration) Act 2005*; and

13 (c) the consequences if the offender breaches the obligations.

14 *Note* An offender may breach the obligations by failing to comply with  
15 them (see Legislation Act, dict, pt 1, def *breach*).

16 (2) Failure to comply with this section does not invalidate the good  
17 behaviour order.

18 **103 Good behaviour orders—official notice of order**

19 (1) As soon as practicable after the court makes the good behaviour  
20 order, the court must ensure that written notice of the order, together  
21 with a copy of the order, is given to—

22 (a) the offender; and



1 (b) if the order includes a community service condition, probation  
2 condition or rehabilitation program condition—the chief  
3 executive.

4 *Note* If the order is part of a combination sentence, a single notice may be  
5 given for the sentences (see Legislation Act, s 49).

6 (2) The notice must include the following information:

7 (a) the term of the good behaviour order;

8 (b) if the good behaviour order includes a community service  
9 condition—

10 (i) the number of hours of community service work the  
11 offender is to perform; and

12 (ii) the period during which the work is to be completed; and

13 (iii) where the offender must present himself or herself for the  
14 administration of the condition to start; and

15 (iv) when, or the period within which, the offender must  
16 present;

17 (c) if the good behaviour order includes a probation condition—

18 (i) the probation supervisor for the offender; and

19 (ii) where the offender must present himself or herself for the  
20 administration of the condition to start; and

21 (iii) when, or the period within which, the offender must  
22 present;

23 (d) if the good behaviour order includes a rehabilitation program  
24 condition—

25 (i) the rehabilitation program the offender is to take part in;  
26 and

- 1 (ii) the period for which the offender is to take part in the  
2 program; and
- 3 (iii) where the offender must present himself or herself for the  
4 administration of the condition to start; and
- 5 (iv) when or the period within which the offender must  
6 present;
- 7 (e) any other conditions included in the good behaviour order.
- 8 (3) Failure to comply with this section does not invalidate the good  
9 behaviour order.

10 **104 Good behaviour orders—explanation and notice to**  
11 **sureties**

- 12 (1) This section applies if the good behaviour order includes a condition  
13 that a surety give security for the offender.
- 14 (2) The court must ensure that reasonable steps are taken to explain to  
15 the surety in general terms (and in language the surety can readily  
16 understand)—
- 17 (a) the nature and the conditions of the order (including the  
18 amount of the security); and
- 19 (b) the offender's good behaviour obligations under the *Crimes*  
20 (*Sentence Administration*) Act 2005; and
- 21 (c) the consequences for the offender and the surety if the offender  
22 breaches the obligations.
- 23 *Note* An offender may breach the obligations by failing to comply with  
24 them (see Legislation Act, dict, pt 1, def *breach*).
- 25 (3) The court must also ensure that reasonable steps are taken to give a  
26 copy of the good behaviour order to the surety.
- 27 (4) Failure to comply with this section does not invalidate the good  
28 behaviour order or the security.

1 **Part 6.4** **Good behaviour orders—other**  
2 **provisions**

3 **105** **Good behaviour—consequences of failure to sign**  
4 **undertaking**

- 5 (1) This section applies if an offender fails to sign the undertaking  
6 mentioned in section 13 (2) for a good behaviour order made in  
7 relation to the offender.
- 8 (2) The court that made the good behaviour order may re-sentence the  
9 offender, or convict and sentence the offender, as if the order had  
10 not been made.
- 11 (3) To remove any doubt, if the offender is re-sentenced by the court  
12 under this section, the offender has the same rights of appeal as the  
13 offender would have had if the good behaviour order had not been  
14 made.

15 **106** **Good behaviour—maximum amount of security**

- 16 (1) The maximum amount of security that may be required to be given  
17 by an offender or a surety under a good behaviour order is—
- 18 (a) if the offence is punishable by a fine—the maximum fine that  
19 may be imposed for the offence; or
- 20 (b) if the offence is not punishable by a fine—
- 21 (i) for the Supreme Court—\$10 000; or
- 22 (ii) for the Magistrates Court—\$2 000.
- 23 (2) However, a good behaviour order made by the Magistrates Court  
24 must not include a condition that the offender or a surety give  
25 security unless—

**Chapter 6**  
**Part 6.4**

Good behaviour orders  
Good behaviour orders—other provisions

Section 106

---

- 1 (a) the offence is punishable by imprisonment for longer than  
2 6 months; or  
3 (b) a suspended sentence order has been made for the offence.

## Chapter 7            Reparation orders

### 107            Application—ch 7

This part applies if a court is considering whether to make, or makes, a reparation order for an offender for an offence.

### 108            Reparation orders—no agreement about amount of loss etc

(1) If the offender and the director of public prosecutions (or any other applicant for the reparation order) do not agree about the amount the offender is to be ordered to pay under the reparation order, the court must decide the amount.

(2) To remove any doubt, section 110 (Reparation orders—evidential basis for orders) applies in relation to facts about the amount the offender is to be ordered to pay under the reparation order.

### 109            Reparation orders—payment by instalments

If the court makes a reparation order for the payment of money, the court may, in addition, order that—

(a) the amount be paid by stated instalments; and

(b) the offender give security, with or without sureties, to the satisfaction of a stated officer of the court for the payment of the amount or of each instalment of the amount.

### 110            Reparation orders—evidential basis for orders

(1) A reparation order must not be made for the offence unless the court considers that the order should be made on the basis of facts established by—

(a) evidence given at the trial; or

- 1                    (b) available documents; or  
2                    (c) admissions by the offender; or  
3                    (d) submissions made by or for anyone (including the director of  
4                    public prosecutions).

5                    (2) In this section:

6                    *available documents*, in relation to the offence, means any of the  
7                    following:

- 8                    (a) any written statements or admissions made for use as evidence  
9                    at a trial that would have been admissible as evidence at the  
10                    trial for the offence;  
11                    (b) depositions taken at any committal proceeding for the offence;  
12                    (c) any written statements or admissions used as evidence in any  
13                    committal proceeding for the offence;  
14                    (d) any other relevant written documents.

15                    **Example for par (d)**

16                    If the value of an object, or the cost of its repair, is relevant to the  
17                    proceeding for the reparation order, an affidavit by a valuer or repairer  
18                    about the value of the object or the cost of its repair would be a relevant  
19                    written document.

20                    *Note*      An example is part of the Act, is not exhaustive and may extend,  
21                    but does not limit, the meaning of the provision in which it  
22                    appears (see Legislation Act, s 126 and s 132).

---

1 **111**      **Reparation orders—power to make other orders etc**

2            To remove any doubt, the power to make a reparation order under a  
3            provision of this Act is additional to the court’s other powers under  
4            this Act or any other territory law, including its power to make a  
5            reparation order under another provision of this Act or any other  
6            territory law.

7            **Example**

8            Stan broke into Alice’s house and stole property belonging to Alice. None of the  
9            property was recovered. Stan is convicted of the theft of the property. The court  
10           may make reparation orders ordering Stan to pay Alice—

- 11           • the value of the stolen property (see s 20); and  
12           • the costs of repairing the damage caused during the break-in (see s 19).

13           *Note*      An example is part of the Act, is not exhaustive and may extend, but  
14           does not limit, the meaning of the provision in which it appears (see  
15           Legislation Act, s 126 and s 132).

16 **112**      **Reparation orders—Confiscation of Criminal Assets Act**

17           (1) The court must not order the offender to make reparation to a person  
18           only because the person’s property is subject to a restraining order  
19           or forfeiture order under the *Confiscation of Criminal Assets*  
20           *Act 2003* (the ***Confiscation Act***).

21           (2) The court cannot make a reparation order in relation to property that  
22           has been restrained or forfeited under the Confiscation Act.

23           *Note*      For applications by a person with an interest in restrained property, or  
24           who had an interest in forfeited property, for the property’s return or for  
25           compensation, see the Confiscation Act, pt 6 and div 9.5.

26           (3) In this section:

27           ***restrained***—property that has been ***restrained*** under the  
28           Confiscation Act includes—

29           (a) property in relation to which an application for a restraining  
30           order has been made under that Act; and

1                    (b) property in relation to which an application for a conviction  
2                    forfeiture order has been made under that Act; and

3                    (c) property subject to forfeiture under that Act.

4      **113      Reparation orders—official notice of order**

5                    (1) This section applies if the court makes a reparation order for the  
6                    offender.

7                    *Note*      If the order is part of a combination sentence, a single notice may be  
8                    given for the sentences (see Legislation Act, s 49).

9                    (2) As soon as practicable after the court makes the reparation order, the  
10                    court must ensure that written notice of the order, together with a  
11                    copy of the order, is given to—

12                    (a) the offender; and

13                    (b) the person in whose favour the order is made.

14                    (3) Failure to comply with this section does not invalidate the reparation  
15                    order.



1 **Chapter 8** **Deferred sentence orders**

2 **Part 8.1** **Deferred sentence orders—**  
3 **making**

4 **114** **Application—pt 8.1**

5 This chapter applies if a court is considering whether to make, or  
6 makes, a deferred sentence order for an offender.

7 **115** **Meaning of *deferred sentence obligations*—pt 8.1**

8 In this Act:

9 *deferred sentence obligations*, for an offender—see section 120  
10 (*Deferred sentence orders—obligations*).

11 **116** **Deferred sentence orders—eligibility**

12 (1) The court must not make a deferred sentence order for the offender  
13 unless it considers that—

14 (a) releasing the offender on bail would allow the offender to  
15 address his or her criminal behaviour and anything that has  
16 contributed to the behaviour; and

17 (b) if the offender were to comply with the order, and any bail  
18 conditions, the court might not impose as severe a sentence for  
19 the offence.

20 (2) The court may make a deferred sentence order whether or not it  
21 considers that the seriousness of the offence justifies a sentence of  
22 imprisonment.

- 1     **117     Deferred sentence orders—suitability**
- 2           (1) In deciding whether to make a deferred sentence order for the
- 3           offender, the court must consider the following:
- 4           (a) any pre-sentence report about the offender;
- 5                 *Note*     The court may order a pre-sentence report under s 41.
- 6           (b) any evidence given by the person who prepared a pre-sentence
- 7           report for the offender;
- 8           (c) any evidence given by a corrections officer about the offender.
- 9           (2) Subsection (1) does not limit the matters that the court may
- 10          consider.
- 11          (3) The court may make, or decline to make, a deferred sentence order
- 12          despite—
- 13           (a) any recommendation in any pre-sentence report about the
- 14           offender’s suitability for a deferred sentence order; or
- 15           (b) any evidence given by the person who prepared any
- 16           pre-sentence report for the offender or a corrections officer.
- 17          (4) The court must record reasons for its decision to make a deferred
- 18          sentence order if—
- 19           (a) any pre-sentence report recommends that the offender is
- 20           suitable but the court decides not to make a deferred sentence
- 21           order; or
- 22           (b) any pre-sentence report recommends that the offender is not
- 23           suitable but the court decides to make a deferred sentence
- 24           order.
- 25          (5) Failure to comply with subsection (4) does not invalidate a deferred
- 26          sentence order.

1 **118** **Deferred sentence orders—indication of penalties**

2 If the court makes a deferred sentence order for the offender, the  
3 court must state, in general terms—

4 (a) the penalty that the offender might receive if the offender  
5 complies with the order and any bail conditions; and

6 (b) the penalty that the offender might receive if the offender does  
7 not comply with the order or a bail condition.

8 **119** **Deferred sentence orders—review requirements in orders**

9 If the court makes a deferred sentence order for the offender, the  
10 court may require the offender to appear before the court at the  
11 times (before the time stated in the order under section 27 (2)), and  
12 at the places, stated in the order for the purpose of reviewing the  
13 offender's compliance with the order.

14 *Note* The court may also review the offender's bail at any time, see the *Bail*  
15 *Act 1992*, s 41A.

16 **120** **Deferred sentence orders—obligations**

17 The offender's obligations (the *deferred sentence obligations*) while  
18 subject to a deferred sentence order are—

19 (a) to comply with the order (including any conditions of the  
20 order); and

21 (b) to comply with the offender's bail conditions.

22 **121** **Deferred sentence orders—explanation and official notice**

23 (1) If the court makes a deferred sentence order for the offender, the  
24 court must ensure that reasonable steps are taken to explain to the  
25 offender in general terms (and in language the offender can readily  
26 understand)—

Section 122

---

- 1 (a) the nature and conditions of the order and the offender's bail  
2 under the *Bail Act 1992*; and
- 3 (b) the offender's obligations under the order and the *Bail*  
4 *Act 1992*; and
- 5 (c) the consequences if the offender breaches the obligations.
- 6 *Note* An offender may breach the obligations by failing to comply with  
7 them (see Legislation Act, dict, pt 1, def *breach*).
- 8 (2) As soon as practicable after the court makes the deferred sentence  
9 order, the court must ensure that written notice of the order, together  
10 with a copy of the order, is given to the offender.
- 11 *Note* The offender must also be given written notice of any bail conditions  
12 (see *Bail Act 1992*, s 34).
- 13 (3) Failure to comply with this section does not invalidate the deferred  
14 sentence order.

15 **122 Deferred sentence orders—period of effect**

- 16 (1) A deferred sentence order must not state a time (the *sentencing*  
17 *time*) under section 27 (2) (Deferred sentence orders—making) that  
18 is more than 12 months after the day the order is made.
- 19 (2) A deferred sentence order—
- 20 (a) starts on the day it is made; and
- 21 (b) ends—
- 22 (i) at the sentencing time; or
- 23 (ii) if the order is earlier cancelled under section 128  
24 (Deferred sentence orders—court's powers on review) or  
25 section 132 (Deferred sentence orders—automatic  
26 cancellation on bail revocation)—on the day the court  
27 cancels it.

1 **Part 8.2** **Deferred sentence orders—**  
2 **supervision**

3 **123 Application—pt 8.2**

4 This part applies if a court (the *sentencing court*) makes a deferred  
5 sentence order for an offender.

6 **124 Deferred sentence orders—arrest without warrant**

7 (1) This section applies if a police officer believes, on reasonable  
8 grounds, that the offender has breached the offender's deferred  
9 sentence obligations.

10 (2) The police officer may arrest the offender without a warrant.

11 (3) If the police officer arrests the offender, the police officer must  
12 bring the offender before—

13 (a) the sentencing court; or

14 (b) if the sentencing court is not sitting—a magistrate.

15 **125 Deferred sentence orders—arrest warrant**

16 (1) If a judge or magistrate is satisfied by information on oath that there  
17 are reasonable grounds for suspecting that the offender has  
18 breached, or will breach, the offender's deferred sentence  
19 obligations, the judge or magistrate may issue a warrant for the  
20 offender's arrest.

21 *Note* For the arrest of an offender who breaches bail, see the *Bail Act 1992*,  
22 s 56A and s 56B.

23 (2) The warrant must—

24 (a) be in writing signed by the judge or magistrate; and

25 (b) be directed to all police officers or a named police officer; and

- 1 (c) state briefly the matter on which the information is based; and  
2 (d) order the offender's arrest and bringing the offender before the  
3 sentencing court.
- 4 (3) If a police officer arrests the offender under this section, the police  
5 officer must, as soon as practicable, bring the offender before—  
6 (a) the sentencing court; or  
7 (b) if the sentencing court is not sitting—a magistrate.

8 **126 Deferred sentence orders—review**

- 9 (1) The sentencing court may review the offender's deferred sentence  
10 order at any time.

11 *Note* The court may also review the offender's bail at any time, see the *Bail*  
12 *Act 1992*, s 41A.

- 13 (2) Without limiting subsection (1), the sentencing court may review  
14 the deferred sentence order to consider whether the offender has  
15 breached, or may breach, the offender's deferred sentence  
16 obligations.

- 17 (3) The sentencing court may review the deferred sentence order—

18 (a) on its own initiative; or

19 (b) on application by—

20 (i) the offender; or

21 (ii) the chief executive; or

22 (iii) the director of public prosecutions.

- 23 (4) A person mentioned in subsection (3) (b) may appear at a review.

1 **127**      **Deferred sentence orders—notice of review**

2            (1) The sentencing court must give a written notice of a proposed  
3            review of the offender’s deferred sentence order to the offender, the  
4            chief executive and the director of public prosecutions.

5            (2) The notice must set out—

6                    (a) the reasons for the review; and

7                    (b) the time and place fixed for the review.

1 **Part 8.3** **Deferred sentence orders—**  
2 **amendment or cancellation**

3 **128** **Deferred sentence orders—court’s powers on review**

4 After reviewing the offender’s deferred sentence order, the  
5 sentencing court may do any of the following:

- 6 (a) take no further action;
- 7 (b) give the offender a warning about the need to comply with the  
8 offender’s deferred sentence obligations (including any bail  
9 conditions);
- 10 (c) by order, amend any of the deferred sentence order’s  
11 conditions;
- 12 (d) by order, cancel the deferred sentence order if—  
13 (i) the offender has applied for its cancellation; or  
14 (ii) the court is satisfied that the offender has breached the  
15 offender’s deferred sentence obligations.

16 **129** **Deferred sentence orders—when amendments take effect**

- 17 (1) This section applies if the sentencing court makes an order (an  
18 **amendment order**) under section 128 (1) (c) amending the  
19 offender’s deferred sentence order’s conditions.
- 20 (2) The court must record its reasons for the decision.
- 21 (3) The amendment order must state when it takes effect.
- 22 (4) The date of effect must be—  
23 (a) the date when the sentencing court gives the offender written  
24 notice of the amendment order; or



1 (b) if a later date of effect is stated in the amendment order—the  
2 date stated.

3 (5) As soon as practicable after the sentencing court makes the  
4 amendment order, the court must ensure that written notice of the  
5 order, together with a copy of the order, is given to the offender, the  
6 chief executive and the director of public prosecutions.

7 (6) Failure to comply with subsection (5) does not invalidate the  
8 amendment order.

9 **130 Deferred sentence orders—when cancellation takes effect**

10 (1) This section applies if the sentencing court makes an order (a  
11 *cancellation order*) under section 128 (Deferred sentence orders—  
12 court’s powers on review) cancelling the offender’s deferred  
13 sentence order.

14 (2) The court must record its reasons for the decision.

15 (3) The cancellation order takes effect on the day it is made.

16 (4) As soon as practicable after the sentencing court makes the  
17 cancellation order, the court must ensure that written notice of the  
18 order, together with a copy of the order, is given to the offender, the  
19 chief executive and the director of public prosecutions.

20 (5) Failure to comply with subsection (4) does not invalidate the  
21 cancellation order.

22 **131 Deferred sentence orders—effect of cancellation**

23 (1) This section applies if the sentencing court makes an order (a  
24 *cancellation order*) under section 128 (Deferred sentence orders—  
25 court’s powers on review) cancelling the offender’s deferred  
26 sentence order.

**Chapter 8**  
**Part 8.3**

Deferred sentence orders  
Deferred sentence orders—amendment or cancellation

Section 131

---

- 1           (2) The offender's bail in relation to which the deferred sentence order  
2           was made is automatically revoked on the making of the  
3           cancellation order.
- 4           (3) The sentencing court must sentence the offender for all offences for  
5           which the court may sentence the offender, whether or not they are  
6           punishable by imprisonment.

---

1 **Part 8.4** **Deferred sentence orders—other**  
2 **provisions**

3 **132** **Deferred sentence orders—automatic cancellation on bail**  
4 **revocation**

5 The offender's deferred sentence order is automatically cancelled if  
6 the offender's bail in relation to which the order was made is  
7 revoked.

8 **133** **Deferred sentence orders—relationship with Bail Act**

9 (1) A requirement in a deferred sentence order under section 27 (2)  
10 (Deferred sentence orders—making) or section 119 (Deferred  
11 sentence orders—review requirements in orders) for an offender to  
12 appear before the sentencing court—

13 (a) does not affect a court's power under the *Bail Act 1992* to  
14 require the offender to appear before the court under that Act;  
15 and

16 (b) applies to the offender despite the *Bail Act 1992*,  
17 section 6 (2) (b) (Rights following grant of bail).

18 *Note* The *Bail Act 1992*, s 6 (2) (b) provides a bailed person is entitled  
19 to remain at liberty in relation to the offence until required to  
20 appear before a court in accordance with the person's undertaking  
21 to appear under that Act.

22 (2) To remove any doubt, section 27 (5) does not limit, and is not  
23 limited by, the *Bail Act 1992*, section 25 (Conditions on which bail  
24 may be granted to adults).

25 (3) To remove any doubt, section 128 (1) (c) (Deferred sentence  
26 orders—court's powers on review) does not limit, and is not limited  
27 by, any provision of the *Bail Act 1992* about varying an offender's  
28 bail conditions.

**Chapter 8**  
**Part 8.4**

Deferred sentence orders  
Deferred sentence orders—other provisions

Section 133

---

- 1           (4) To remove any doubt, section 126 (Deferred sentence order—court  
2           review) does not limit, and is not limited by, any provision of the  
3           *Bail Act 1992*, part 6 (Review of bail decisions) about review of an  
4           offender's bail.

## Chapter 9                      Miscellaneous

### 134                      **Reparation—other actions for recovery**

- (1) This Act does not abolish or otherwise affect any cause of action that anyone may have—
- (a) to recover goods or property; or
  - (b) to recover damages for, or be indemnified against, any loss or expense.
- (2) However, in a proceeding in relation to any loss or expense that resulted from the commission of an offence, a court must consider any amount paid under a reparation order in relation to the commission of the offence.

### 135                      **Information exchanges between criminal justice entities**

- (1) This section applies to any information in relation to an offence (including an alleged offence) in a record of a criminal justice entity, including—
- (a) information about a person charged with the offence; and
  - (b) a victim of the offence; and
  - (c) a person convicted or found guilty of the offence.
- (2) The criminal justice entity may give the information to another criminal justice entity for the purposes of the other entity.
- (3) This section is additional to any other Act that provides for information to be given by, or to, a criminal justice entity.

*Note*                      A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- 1 (4) In this section:  
2 *criminal justice entity* means any of the following:  
3 (a) the Supreme Court;  
4 (b) the Magistrates Court;  
5 (c) the chief executive;  
6 (d) the sentence administration board;  
7 (e) the director of public prosecutions;  
8 (f) the chief police officer;  
9 (g) any other entity prescribed by regulation.  
10 *victim*, of an offence—see section 47.
- 11 **136 Reduction of sentence—appeal if assistance undertaking**  
12 **breached**
- 13 (1) This section applies if a court imposed a lesser penalty (including a  
14 shorter nonparole period) on an offender under section 36  
15 (Reduction of sentence—assistance to law enforcement authorities)  
16 having regard to assistance undertaken to be provided by the  
17 offender to law enforcement authorities.
- 18 (2) If, after the sentence is imposed, the offender does not assist law  
19 enforcement authorities in accordance with the undertaking, the  
20 director of public prosecutions may, at any time during the term of  
21 the sentence, appeal against the inadequacy of the sentence.
- 22 (3) The director of public prosecutions must not appeal unless the  
23 director is of the opinion that the appeal is in the interests of the  
24 administration of justice.
- 25 (4) If the court hearing the appeal is satisfied that the offender has  
26 completely failed to assist law enforcement authorities in

- 1           accordance with the undertaking, the court must substitute for the  
2           reduced sentence the sentence that it would otherwise have imposed.
- 3           (5) If the court hearing the appeal is satisfied that the offender has  
4           partly failed to assist law enforcement authorities in accordance with  
5           the undertaking, the court may substitute for the reduced sentence  
6           the sentence it considers appropriate.
- 7           (6) The sentence that may be substituted under subsection (5) must not  
8           exceed the sentence that may be substituted under subsection (4) if  
9           the offender had completely failed to assist law enforcement  
10          authorities in accordance with the undertaking.

11       **137           Effect of failure to comply with Act**

12           A failure to comply with this Act may be considered by an appeal  
13           court in any appeal against sentence even if this Act declares that  
14           the failure to comply does not invalidate the sentence.

15       **138           Regulation-making power**

16           The Executive may make regulations for this Act.

17           *Note*    Regulations must be notified, and presented to the Legislative  
18           Assembly, under the Legislation Act.

1 **Chapter 10 Transitional**

2 **139 Application of Act—charges after commencement**

3 (1) This Act applies to an offender in relation to an offence if the  
4 offender is charged with the offence on or after the commencement  
5 of this section, whether the offence was committed before or after  
6 the commencement of this section.

7 (2) The old sentencing law continues to apply to an offender in relation  
8 to an offence if the offender was charged with the offence before the  
9 commencement of this section.

10 (3) However, a court must not make a home detention order under the  
11 *Rehabilitation of Offenders (Interim) Act 2001* for the offender.

12 (4) This section applies subject to the transitional provisions of the  
13 *Crimes (Sentence Administration) Act 2005*.

14 (5) In this section:

15 ***old sentencing law*** means the law of the Territory as in force  
16 immediately before the commencement of this section in relation to  
17 proceedings for offences, including the following:

18 (a) the making of orders for the conditional release of offenders  
19 (whether with or without conviction);

20 (b) the imposition of sentences for offenders convicted of  
21 offences;

22 (c) the making and enforcement of reparation orders for offenders;



- 1 (d) the making of other orders for offenders on conviction (for  
2 example, community service orders).

3 **Examples**

4 1 the *Crimes Act 1900*, part 15 (Sentences), part 18 (Conditional release of  
5 offenders) and part 19 (Community service orders)

6 2 the *Periodic Detention Act 1995*, section 4

7 *Note 1* The legislation in the examples, and other aspects of the old sentencing  
8 law, are repealed or amended by the *Crimes (Sentencing Legislation)*  
9 *Consequential Amendments Act 2005*.

10 *Note 2* An example is part of the Act, is not exhaustive and may extend, but  
11 does not limit, the meaning of the provision in which it appears (see  
12 Legislation Act, s 126 and s 132).

- 13 (6) This section expires 5 years after the day it commences.

14 **140 Nonparole periods—Rehabilitation of Offenders (Interim)**  
15 **Act, s 31**

- 16 (1) This section applies if—

17 (a) a nonparole period (an *old nonparole period*) is set, whether  
18 before or after the commencement of this section, for an  
19 offender under the *Rehabilitation of Offenders (Interim) Act*  
20 *2001*, section 31 (Court to set nonparole period); and

21 (b) for an old nonparole period set before the commencement—the  
22 old nonparole period has not ended.

- 23 (2) The old nonparole period is taken to be a nonparole period set under  
24 this Act, section 65 (Nonparole periods—court to set)—

25 (a) if the old nonparole period was set before the commencement  
26 of this section—for the remainder of the period for which it  
27 was originally set; or

28 (b) if the old nonparole period is set after the commencement of  
29 this section—for the period set by the court.

1 (3) This section expires 5 years after the day it commences.

2 **141 Reparation orders—Crimes Act, s 350**

3 (1) This section applies if—

4 (a) whether before or after the commencement of this section, a  
5 court makes an order (the *old reparation order*) under the  
6 *Crimes Act 1900*, section 350 for an offender in relation to an  
7 offence; and

8 (b) if the old reparation order was made before the commencement  
9 of this section—the order is still in force.

10 (2) If the old reparation order was made before the commencement of  
11 this section—

12 (a) the old reparation order (as in force immediately before the  
13 commencement of this section) is taken to be a reparation order  
14 under part 3.3 (the *new reparation order*); and

15 (b) any conditions included in the old reparation order (as in force  
16 immediately before the commencement of this section) are  
17 taken to be conditions included in the new reparation order;  
18 and

19 (c) the new reparation order may be enforced as if it had been  
20 made under this Act.

21 (3) If the old reparation order is made after the commencement of this  
22 section—

23 (a) the old reparation order is taken to be a reparation order under  
24 part 3.3 (the *new reparation order*) immediately after it is  
25 made; and

26 (b) any conditions included in the old reparation order are taken to  
27 be conditions included in the new reparation order; and

1 (c) the new reparation order may be enforced as if it had been  
2 made under this Act.

3 (4) This section expires 5 years after the day it commences.

4 **142 Transitional regulations**

5 (1) A regulation may prescribe transitional matters necessary or  
6 convenient to be prescribed because of the enactment of this Act or  
7 the *Crimes (Sentencing Legislation) Consequential Amendments Act*  
8 *2005*.

9 (2) A regulation may modify this part (including its operation in  
10 relation to another territory law) to make provision in relation to  
11 anything that, in the Executive's opinion, is not, or is not adequately  
12 or appropriately, dealt with in this part.

13 (3) A regulation under subsection (2) has effect despite anything else in  
14 this Act or another territory law.

15 (4) This section expires 2 years after the day it commences.

## 1 Dictionary

2 (see s 3)

3 *Note 1* The Legislation Act contains definitions and other provisions relevant to  
4 this Act.

5 *Note 2* For example, the Legislation Act, dict, pt 1 defines the following terms:

- 6 • administrative unit
- 7 • adult
- 8 • chief executive (see s 163)
- 9 • director of public prosecutions
- 10 • doctor
- 11 • entity
- 12 • law (of the Territory)
- 13 • lawyer
- 14 • may (see s 146)
- 15 • must (see s 146)
- 16 • oath
- 17 • police officer
- 18 • road transport authority
- 19 • sentence administration board
- 20 • statutory office-holder
- 21 • territory authority
- 22 • working day.

23 ***additional offence***, for part 4.4 (Taking additional offences into  
24 account)—see section 55.

25 ***assessor***, for part 4.2 (Pre-sentence reports)—see section 41 (5).

26 ***bail condition***—see the *Bail Act 1992*, dictionary.

27 ***because of***, an offence, for part 4.3 (Victim impact statements)—see  
28 section 47.

1            **combination sentence**—see section 29 (1) (Combination  
2 sentences—offences punishable by imprisonment) and  
3 section 30 (1) (Combination sentences—offences punishable by  
4 fine).

5            **community service condition**, of a good behaviour order for an  
6 offender—see section 85.

7            **community service work**—see the *Crimes (Sentence*  
8 *Administration) Act 2005*, dictionary.

9            **controlled drug** means a controlled drug under the Criminal Code,  
10 chapter 6 (Serious drug offences).

11           **correctional centre** means—

12           (a) a correctional centre under the *Crimes (Sentence*  
13 *Administration) Act 2005*; or

14           (b) a NSW correctional centre.

15           **corrections officer**—see the *Crimes (Sentence Administration)*  
16 *Act 2005*, dictionary.

17           **court**—if a **court** has sentenced an offender, made an order or given  
18 a direction, means the same court, however constituted.

19           **deferred sentence obligations**, for an offender, see section 120.

20           **deferred sentence order**—see section 27 (2).

21           **domestic violence offence**—see the *Domestic Violence and*  
22 *Protection Orders Act 2001*, section 9 (2).

23           **driver licence disqualification order**—see section 17 (2).

24           **existing sentence**, for part 5.3 (Imprisonment—concurrent and  
25 consecutive sentences)—see section 70 (1).

26           **fine**, for part 5.3 (Imprisonment—concurrent and consecutive  
27 sentences)—see section 69.

28           **fine order**—see section 14 (2).

- 1           **good behaviour order**—see section 13 (2).
- 2           **harm**, for part 4.3 (Victim impact statements)—see section 47.
- 3           **list of additional offences**, for part 4.4 (Taking additional offences  
4 into account)—see section 55.
- 5           **non-association order**—see section 21.
- 6           **non-conviction order**—see section 17 (2).
- 7           **nonparole period**, for a sentence of imprisonment—  
8           (a) see section 65 (2) (Nonparole periods—court to set); and  
9           (b) if the nonparole period of the sentence is amended—means the  
10           nonparole period as amended.
- 11           **offender**—see section 8.
- 12           **parole order**—see the *Crimes (Sentence Administration) Act 2005*,  
13           dictionary.
- 14           **periodic detention**—see the *Crimes (Sentence Administration)*  
15           *Act 2005*, dictionary.
- 16           **periodic detention period**—see section 11 (2), and includes the  
17           period as amended under the *Crimes (Sentence Administration)*  
18           *Act 2005*.
- 19           **place restriction order**—see section 21.
- 20           **pre-sentence report**—see section 41 (1).
- 21           **pre-sentence report order**—see section 41 (1).
- 22           **primary sentence**, for part 5.3 (Imprisonment—concurrent and  
23           consecutive sentences)—see section 70 (1).
- 24           **primary victim**, for part 4.3 (Victim impact statements)—see  
25           section 47, definition of **victim**, paragraph (a).
- 26           **principal offence**, for part 4.4 (Taking additional offences into  
27           account)—see section 55.

1            ***probation condition***, of a good behaviour order for an offender,  
2            means a condition included in the order that, during the period of the  
3            order, or for a part of that period stated in the order, the offender  
4            is—

5            (a) to be on probation subject to the supervision of a person  
6            appointed under the order; and

7            (b) to obey all reasonable directions of the appointed person.

8            **Example of directions for par (b)**

9            that the offender comply with a condition mentioned in section 13 (3) (g),  
10            examples, even if the condition is not a condition of the order

11            *Note*     An example is part of the Act, is not exhaustive and may extend, but  
12            does not limit, the meaning of the provision in which it appears (see  
13            Legislation Act, s 126 and s 132).

14            ***rehabilitation program***, for a good behaviour order—see section 93.

15            ***rehabilitation program condition***, of a good behaviour order for an  
16            offender—see section 93.

17            ***reparation order*** means an order under—

18            (a) section 19 (3) (Reparation orders—losses and expenses  
19            generally); or

20            (b) section 20 (3) or (4) (Reparation orders—stolen property).

21            ***sentence*** means—

22            (a) when used as a noun—the penalty imposed for an offence; or

23            (b) when used as a verb—to impose a penalty for an offence.

24            ***sentence of imprisonment*** includes—

25            (a) a sentence of imprisonment that has been imposed but is yet to  
26            start; and

27            (b) a combination sentence that imposes a penalty of imprisonment  
28            together with another penalty.

- 1            **sentence-related order**, for part 4.4 (Taking additional offences into  
2            account)—see section 55.
- 3            **sentencing court**, for part 8.2 (Deferred sentence orders—  
4            supervision) and part 8.3 (Deferred sentence orders—amendment or  
5            cancellation)—see section 123.
- 6            **surety**, for a good behaviour order for an offender, means a person  
7            other than the offender who gives security for complying with the  
8            order.
- 9            **suspended sentence order**—see section 12 (2).
- 10           **term**—if the term of a sentence is amended under the *Crimes*  
11           (*Sentence Administration*) *Act 2005*, the **term** of the sentence as  
12           amended.
- 13           **victim**, of an offence, for part 4.3 (Victim impact statements)—see  
14           section 47.
- 15           **victim impact statement**, for an offence, for part 4.3 (Victim impact  
16           statements)—see section 47.

---

## Endnotes

- 1        Presentation speech**  
Presentation speech made in the Legislative Assembly on        2005.
- 2        Notification**  
Notified under the Legislation Act on                                2005.
- 3        Republications of amended laws**  
For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

---

© Australian Capital Territory 2005